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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 137

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CHARLOTTE ANDREWS,
Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, *et al.*,
Defendants and Appellees.

CHARLOTTE ANDREWS,
Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, *et al.*,
Defendants and Appellees.

Appeal to the Supreme Court of the United States
From the California State Appellate Courts.

JURISDICTIONAL STATEMENT.

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SUBJECT INDEX

PAGE

I.

Jurisdictional statement 1

A. Opinions below 2

B. Jurisdiction 2

C. Questions presented 2

D. Constitutional provisions and ordinances involved 5

E. Statement 6

F. The questions are substantial 12

First ground 12

Second ground 17

Third ground 28

Fourth ground 31

Fifth ground 33

Sixth ground 38

In conclusion 41

Appendices:

Appendix "A." Text and statutes involved ..... App. p. 1

Appendix "B." Copies of opinion and judgments below ..... App. p. 23

TABLE OF AUTHORITIES CITED

CASES — PAGE

Barrows v. Jackson, 346 U. S. 249, 97 L. Ed. 1586, 73 S. Ct. 1031 17

Bates v. Little Rock, 4 L. Ed. 2d 480 ..... 13, 14

Boyd v. Thayer, 143 U. S. 135 24

Civil Rights Cases, 109 U. S. 3 16

Colegrove v. Green, 328 U. S. 549 16

Davis v. Wechsler, 263 U. S. 22 37

Ewing v. Casselberry, 339 U. S. 594 21

Fox v. River Paper Co., et al. v. Railroad Commission of Wisconsin, 274 U. S. 651, 71 L. Ed. 1279 37

Guinn v. United States, 238 U. S. 347 16

Hanley, Estate of, 23 Cal. 2d 120 40

Hollywood Circle v. Dept. of Alcoholic Control, 153 Cal. App. 2d 107 40

Home Tel. & Tel. Co. v. City of Los Angeles, 227 U. S. 278 26

Johnson v. Stevenson, 170 F. 2d 108 16

Jordan v. American Eagle, 169 F. 2d 281 21

MacDougall v. Green, 335 U. S. 281 16

Maxwell v. City of Santa Rosa, ... A. C. ..... (Sac. No. 6293, Dec. 18, 1959) 27

Napue v. People of State of Illinois, 360 U. S. 264, 3 L. Ed. 2d 1217 36

National Assn. for Advancement of Colored People v. Alabama, 357 U. S. 449, 2 L. Ed. 1488, 78 S. Ct. 1163 17

Neal v. Delaware, 103 U. S. 70 16

Nixon v. Herndon, 273 U. S. 536 16

Philadelphia v. Securities Exchange, 175 F. 2d 808 21

Postal v. Newport, 247 U. S. 464 24

South v. Peters, 339 U. S. 276 16

Swafford v. Templeton, 185 U. S. 487 16

PAGE

Tennant v. Civil Service Commission, 77 Cal. App. 2d 489 40
United States v. Classic, 31 U. S. 299 16
United States v. Mosley, 238 U. S. 383 16
United States v. Raines et al., 4 L. Ed. 2d 524, 80 S. Ct. (.....) 17
Walker v. City of Hutchinson, 352 U. S. 113 29
Wiley v. Sinkler, 179 U. S. 58 16
Wood v. Broom, 287 U. S. 1 16
Yarbrough, Ex parte, 110 U. S. 651 16

STATUTES

California Health and Safety Code, Sec. 33564 18
California Health and Safety Code, Sec. 33565 18,
California Health and Safety Code, Sec. 33570 19
California Health and Safety Code, Sec. 33573 42
California Health and Safety Code, Sec. 33701 41
California Health and Safety Code, Sec. 33703 38
California Health and Safety Code, Sec. 33746 39
California Health and Safety Code, Sec. 33747 38
United States Code Annotated, Title 28, Sec. 1257(2) 2
United States Code Annotated, Title 28, Sec. 1257(3) 2
United States Code Annotated, Title 42, Chap. 42, par. 1455, p. 542 ..... 25, 27
United States Constitution, Fourteenth Amendment 3, 13, 16, 27, 30
United States Constitution, Fourteenth Amendment, Sec. 1 5

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Appeal to the Supreme Court of the United States From the California State Appellate Courts.

I.

JURISDICTIONAL STATEMENT.

Appellant Charlotte Andrews, on her own behalf, and others similarly situated, appeals to the Supreme Court of the United States from the final judgment or order of the Supreme Court of the State of California, which was entered on January 13, 1960, which denied her petition for hearing in said Court, to review decisions of the Court of Intermediate Appeals of said State, which affirmed certain orders of the State Trial Court of First Instance, hereinafter specified. Two cases involving the same subject matter and closely related questions are covered by a single jurisdictional statement. Notices of Appeal to the

Supreme Court of the United States were filed with said court of Intermediate Appeals April 12, 1960, and served upon all adverse parties on the same date, all within ninety days.

A. Opinions Below.

Attached hereto as Appendix "B" are copies of the opinions which have been rendered by the State Court of First Instance (pp. 24-29), Courts of Intermediate Appeals, (pp. 30-41), and Supreme Court, (p. 42), reference to which will be necessary in appellant's presentation of the grounds which it is contended that the federal questions herein are substantial.

B. Jurisdiction.

This appeal is taken pursuant to 28 U. S. C. A. (1257 (2) and (3)). The appeal pertains to certain ordinances and resolutions of a State Municipal Corporation, exercised pursuant to delegated state legislative authority and endowed with the force of law, which ordinances and resolutions were enacted in violation of due process, in denial of the equal protection of the laws, and in abridgment of the privileges of electors in the exercise of their civil and political rights, in deprivation and adversely to the property rights of Appellant.

C. Questions Presented.

1. May a State Municipal Corporation induce its electors, United States Citizens, to exercise their franchise to vote on the question of whether said Municipal Corporation shall create or activate a local Redevelopment Agency to qualify to acquire federal funds and condemn private property; and after said electors in reliance

on the inducement of said Municipal Corporation, in a free election, involving their political and civil rights, voted against the creation of such an Agency; may said Municipal Corporation, contrary to law and popular election, and the directive of the voters, abridge said electors privileges as United States citizens, and deny them the equal protection of the law, by rendering the votes cast ineffective, and nevertheless activate and create a local Redevelopment Agency?

2. May a State Municipal Corporation in the making of factual determinations IN AN ADJUDICATORY PROCEEDINGS PROVIDED BY LAW, deprive property owners of the right to present evidence, contrary to procedural due process, wherein said property owners were thereby prevented by said State Municipal Corporation from opposing on the merits, a Redevelopment Plan submitted by a local Redevelopment Agency to qualify said Agency to acquire federal funds to condemn appellee's property?

3. Does a Municipal Corporation comply with the due process clause of the Fourteenth Amendment by conducting an adjudicatory proceedings which directly and adversely affects the legally protected property rights of interested parties, pursuant to a notice of hearing in a single newspaper publication, which under the circumstances at bar, prohibited the affected parties from exercising the right to properly prepare themselves in the protection of their property rights?

4. May a State Municipal Corporation, in its official capacity as a legislative body, purposely represent that it was exercising legislative powers to reject evidence, offered in opposition to a final Redevelopment Plan it adopted by Ordinance, to condemn certain prop-

erties, and thereby induce the electors of said Municipal Corporation to circulate a sufficient referendary petition against the said Municipal Ordinance, in the exercise of said electors civil and political rights; and may said Municipal Corporation upon being advised of the sufficiency of said petition, illegally refuse to act upon said referendary petition, by the purposeful expediency of disavowing it prior official representation that it had been exercising legislative powers at the hearing which approved said Municipal Ordinance, and thereby abridge appellants privileges and immunities, which had been completely exercised in reliance thereon and deprive appellants of the equal protection of the laws, and due process of law?

5. May a State Municipal Corporation arbitrarily deprive appellant of the right of access provided by State law to a State Court by way of review on federal questions involved in adopting an Ordinance, by discriminatorily withholding procedural action which constituted a condition precedent to appellant's right to review, until after said right to review provided by law, had been outlawed by the 90 days State statute of limitations, thereby depriving petitioner of the equal protection of the laws and permitting the taking of her property without due process of law?

6. May State judicial officers arbitrarily adopt rules of law to sustain Ordinances and Resolutions of a Municipal Corporation in violation of the fundamental charter, by capriciously characterizing an "adjudicatory proceedings" as a "legislative act", and a "legislative act", as an "administrative act"; and may the Supreme Court of the United States examine the nature of the proceedings and conduct of the Municipal Corporation with regard thereto,

the definitions and characterizations given by the State Court to the contrary notwithstanding, and thereby prevent, by the purposeful selection of words, an evasion of the constitutional duties and obligations of said state Municipal Corporation.

D. Constitutional Provisions and Ordinances Involved.

Amendment XIV, section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1. Proposition "A" as submitted and voted upon by the electors at general election held on November 7, 1950, City of San Bernardino, California, on the creation of a local Redevelopment Agency, and certification that the greater number of votes cast thereon were against the creation and establishment of redevelopment agency (App. A. pp. 2-3).

2. Resolution No. 2361, adopted June 23, 1952, by the Common Council of the City of San Bernardino, California, which created and activated a local Redevelopment Agency. Is referred to in Ordinance No. 2217 *infra* [Clk. Tr. 4th Civil 5983, p. 8, lines 7-11]. (App. A. pp. 4-5).

3. Ordinance No. 2217, adopted on March 31, 1958, by the Common Council of the City of San Bernardino, California, which approved the adoption

of a Tentative Redevelopment Plan [Text appears in Clk. Tr. 4th Civil 5983, p. 23, subpages 8-32].*

4. Ordinance No. 2233, adopted July 21, 1958, by the Common Council of the City of San Bernardino, which approved the adoption of a Final Redevelopment Plan (App. A. pp. 6-22).

5. Certification of sufficiency of referendum by electors by Clerk of the Appellee Municipal Corporation on Ordinance No. 2233, *supra*. This exhibit has been seperately transmitted directly to the Clerk of the Supreme Court, denominated plaintiff's Exhibit I in case No. 92497, Court of First Instance, and considered as legally sufficient by the Court of Intermediate Appeals in its opinion (App. B p. 36, lines 20-31).

E. Statement.

Facts material to the consideration of the questions presented which bring the case within the statutory provisions to confer jurisdiction in the Supreme Court of the United States upon matters cognizable by said Tribunal are the following:

—a—

The Municipal Corporation, City of San Bernardino, is located in the County bearing the same name, in the State of California. It is the largest county in the United States. It is larger than the State of Maryland.

The City of San Bernardino is a well planned community with wide streets. The area involved about to be redeveloped, while not bare ground without improvements,

*Exhibit in Clerk's Transcript aforesaid because of length.

has the lowest density of population in the community. Streets are wide and straight. Lot parcels are large. Sewage and all public utilities are present in said area, which are on a par with the balance of the community. A park is located within the area, as well as acres of open land. The drastic extreme of redevelopment is inappropriate, but said matter is of no concern nor related to the points on this appeal.

Within said community, a large segment of its citizens have banded together in an association denominated Private Owners Mutual Redevelopment Association, who have advanced the belief that the area may be redeveloped without the need of using federal funds, and solely by the private initiative of the landowners, which belief and freedom to engage realistically in the same to advance and protect their property interests, has been denied by the State.

The Electors at Large, of the City of San Bernardino, as well as the property owners within the area sought to be redeveloped, in the exercise of their civil and political rights, by popular vote and election, according to the record to which reference will be made herein, DO NOT WANT A LOCAL REDEVELOPMENT AGENCY TO FUNCTION AND EXERCISE ITS POWERS IN THE CITY OF SAN BERNARDINO.

Two areas within the general community of said City have heretofore been designated by Appellee Common Council, as areas for redevelopment, pursuant to a Master Community Plan. The first area designated as (The Gateway Project) was abandoned because of general community opposition. In the second area designated (The Meadowbrook Project), being the matter at bar, said Appellee Municipal Corporation has nevertheless, despite

strenuous general community opposition, and an initiative which rejected the establishment of a local redevelopment agency, proceeded to nevertheless create and activate such an agency and adopted a final redevelopment plan for said Meadowbrook Project.

The Municipal Corporation of San Bernardino, through its councilmanic members have in a series of steps rooted in design rendered nugatory, by purposeful discrimination in the application of the law, all efforts advanced by said segment of citizens, within the framework of state law, to protect their collective beliefs and interests, and execution thereof.

The State Instrumentality, *i.e.*, Municipal Corporation in the case at bar, is enforcing its discriminatory practice as hereinafter set forth, in such fashion as to abridge the privilege and immunities of the electors, *i.e.*, citizens of the United States, and has denied them due process and the equal protection of the law as specified with particularity herein.

—b—

The State Court of Intermediate Appeals has by finality of judgment established the law of the case, and made a pending review before the Court of First Instance, under the California Community Redevelopment Act, one of form without substance, as follows:

The State Intermediate Court of Appeals in its opinion 4th Civil No. 5983, concerning a petition for writ of mandate, on unconstitutional proceedings of a State Municipal Corporation, disposed of the controversy as follows:

> "Plaintiff makes no complaint nor point of the failure of the trial court to permit amendment, and

from that we asume she admits she could not advantageously do so. Furthermore, on the fact of the complaint itself, receiving as it does the essential steps taken by the Council, it does not appear that any amendment could afford plaintiff any assistance."

The State Intermediate Court of Appeals in its companion opinion, 4th Civil No. 6243, in the second count of a petition asking for a writ of mandate, to which the trial court had sustained a demurrer without leave to amend, disposed of said count as follows:

"Petitioner has made no point of amending her petition and we are unable to discover how she could adequately amend it in the respect in which the demurrers were sustained."

The Intermediate State Court decision and record was not disturbed upon petition for hearing to the State Supreme Court, and the judgment appealed from to said State Supreme Court completely disposed of the question, and is final.

The above final decisions of the State Courts upheld the validity of Resolution No. 2361, adopted June 23, 1952 (App. A pp. 4-5), which was contrary to Resolution No. 1896, enacted as an ordinance by the electors on November 7, 1950 (App. A, pp. 2-3); and determined that certain adjudicatory proceedings which adopted a tentative redevelopment plan (Ordinance Number 2217) [See Clk. Tr. 4th Civil 5983, p. 23, subpages 8-32] were legislative, and that certain legislative proceedings which adopted a final redevelopment plan (Ordinance Number 2233) (App. A, pp. 6-22) were administrative proceedings.

—c—

The above final decisions, will not be affected by unresolved contingencies, which provide for a judicial review by the State Court of First Instance of certain adjudicatory proceedings had before said State Municipal Corporation, as judicial discretion by the State Court which may review unresolved contingencies, has now been directed by the State Supreme Court in the law of the case, to assume that the conduct, determinations and findings of said Municipal Corporations were the result of laws and hearings had in accordance with due process of the United States Constitution, and that Appellants constitutional rights were not violated.

It is submitted that if part of the inter-related steps be claimed to be non-federal grounds, that they do not fairly, independently, and adequately support the judgment appealed from hergin. The same, however, are material in the re-examination of the findings pertaining to the insidious and purposeful discriminatory conduct of said State Municipal Corporation as against appellant and the class of citizens referred to herein in her representative suit.

—d—

The federal questions sought to be reviewed were properly raised originally, as follows:

1. Before the State Municipal Corporation during its adjudicatory hearings [Rep. Tr. of hearing, p. 42, lines 14-22; Rep. Tr. of hearing, p. 43, line 22, to p. 44, line 7], inclusive of hearing upon the adoption of the Tentative Redevelopment Plan before said State Municipal Corporation.

2. Before the trial Court of First Instance, Case No. 92497 (4th Civil No. 5983).

a. Paragraph III [Clk. Tr. p. 31], Petition for Writ of Mandate.

b. Paragraph XIII [Clk. Tr. p. 8, line 25, to p. 9, line 8].

c. Paragraph III reincorporated by reference, in Paragraph I [Clk. Tr. p. 9, lines 12-14], second count, which relates to lack of procedural due process, pleaded in succeeding paragraphs.

d. Paragraph III, reincorporated by reference in Paragraph I [Clk. Tr. p. 16, lines 20-23] third count, which relates to the quality of notice, pleaded in succeeding paragraphs.

3. Before the trial Court of First Instance, Case No. 94346 (4th Civil No. 6243).

a. The prayer of the Petition for Judicial Review, [Clk. Tr. p. 36, lines 19-27] requested State Judicial aid to permit petitioner "to produce and present material evidence, in accordance with proper procedural rules, in compliance with due process of law". [Clk. Tr. p. 36, lines 28-32, and Clk. Tr. p. 37, lines 1-7] of the prayer of petitioner requested State Judicial aid, to enforce due process, as therein specified.

The Federal questions referred to above were thereafter preserved and re-emphasized, before the State Intermediate Court of Appeals, and Supreme Court, and all federal questions have been raised at the first reasonable opportunity afforded as set forth in the argument hereafter.

F. The Questions Are Substantial.

First Ground.

The State Municipal Corporation proposed and submitted to the electors of said Municipality, a proposition. The City Council resolution read as follows:

> "Now, Therefore, the Mayor and Common Council of the City of San Bernardino Do Hereby Ordain as Follows: Section One: That a special election be, and the same is hereby called and will be held in the City of San Bernardino on the 7th day of November, 1950, for the purpose of submitting to the qualified electors of said City, for their Approval or Rejection, the Following Proposition:
>
> 'Shall the Mayor and Common Council of the City of San Bernardino create and establish a redevelopement agency pursuant to the provisions of the California Community Redevelopment Law'."

The proposition was placed on the ballot as above worded, together with arguments, for and against which arguments for and against were printed on the ballot. Appellee Municipal Corporation sought the consent of an informed citizenry to which it would be responsive. Nothing on the face of the ballot advised the electors that it was intended that the result would be a non-binding advisory opinion [4th Civil 5983; Clk. Tr. p. 5, lines 7-8, Ex. 2; 4th Civil No. 6243, Clk. Tr. p. 5, lines 8-10] (App. A pp. 2-3). The scope and import of the proposition submitted on the ballot was clear. It set forth an intelligible single determination which needed no implementation whatever. The question needed no further title or name to notify the voters of the nature of the proposal to be voted on.

The above specific proposition was rejected by the voters of the City of San Bernardino [4th Civil No. 5983; Clk. Tr. p. 5, lines 10-15, Ex. 3]. (App. A p. 3). Appellee Common Council of the City of San Bernardino thereafter, contrary to said initiative and in direct violation of statutory law which prevented the repeal of said initiative except by popular election nevertheless passed a legislative resolution which activated and created a redevelopment agency being Resolution 2361 [4th Civil No. 5983; Clk. Tr. p. 8, lines 18-28, Exs. 6 and 7, p. 1, lines 7-17 of said Ex.]. (App. A pp. 4-5).

The Appellee Municipal Corporation, in the preamble of its resolution [Res. No. 1896—4th Civil No. 5896; Clk. Tr. p. 23, subpages 1-3], which was not disseminated for publication, attempted to create a device for measuring electoral opinion, where the ballots instead of being real, would become straw ballots if contrary to the opinion of said Municipal Corporation. The electors, citizens of the United States, were deprived by said Municipal Corporation of the legal effect of their ballots at the polls.

It is conceded that the acts of legislative bodies are not immune from attack for fraud or abusively deceitful practices, and the common law right to a free election means one without fraud or deceit Jelf, Corrupt and Illegal Practices Prevention Acts, 1883, and 1885, 3rd Edition.

If the mere airing of grievances is protected by the due process clause of the 14th Amendment from invasion by the States, (*Bates v. Little Rock*, 4 L. Ed. 2d 480, 485), the permissible legal result of said airing, particularly when said legal result has been consolidated in the form of positive rights at the ballot box which have crystallized the freedom of expression, is likewise protected by the 14th Amendment.

The existence of Appellee Municipal Corporation's Resolution 2361 [4th Civil No. 5983; Clk. Tr. p. 8, lines 18-28, Exs. 6 and 7, p. 1, lines 7-17 of said Ex.] (App. A pp. 4-5), is State action, which has impinged the constitutional protections. Nor may the Municipal Corporation Appellee in the case at bar shield its purposeful deceit and "dog in the manger" objective by an assertion in the preamble of the resolution which proposed the ordinance, that it would be "advisory", particularly when said preamble was omitted from the public ballot exhibited to the electors. (4th Civ. No. 5983; *supra.*) (App. A pp. 2-3.)

> "But governmental action do not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance".
>
> *Bates v. Little Rock,* 4 L. Ed. 2d 480, 487 (Feb. 23, 1960).

Appellee Municipal Corporation, City of San Bernardino, under color of State Law, induced its electors to exercise their right and franchise to vote upon an initiative measure, and in reliance thereon the electors did so vote. The conduct of the municipal Corporation in making legally ineffective the votes cast, wherein the electors, citizens of the United States, in reality cast "blank votes" is contrary to the public policy of the United States, and an abridgment of their privileges and immunities as citizens of the United States.

It is contended the initiatory vote of the electorate of the City of San Bernardino, citizens of the United States,

cannot be abridged by arbitrary official action. The privileges and immunities of the electors as citizens of the United States, if otherwise qualified as electors, and it has not been contended here by Appellees that the said voters were not qualified electors under State Law, include the right to cast a meaningful and effective vote, when called upon to do so by State or Municipal action, free from fraud or imposition by State official action.

State Municipal officials when officially engaged in State or Municipal affairs of great and grave public local concern, who call upon and directly induce public expression and electoral participation by citizens of the United States, who are also citizens of the State and affected thereby, to exercise as United States citizens their State privileges of vote, to peaceably assemble, petitions for redress, and by the exercise thereof have acquired a fundamental and pervasive right; initiative and referendum, the results of their action although in the exercising of a State privilege, cannot be rendered ineffective or abridged by arbitrary purposeful limitations and by arbitrary inconsistent contradictory action.

The right of a United States Citizen to have his vote counted is an empty gesture, unless in addition thereto he is given the right of an effective vote; *i.e.*, given approximately equal weight to that of other citizens, except in cases posing political issues arising from a state's geographical distribution of electoral strength among its

political subdivisions, in which cases only, the Supreme Court has not exercised its equity power.

South v. Peters, 339 U. S. 276 (1949);
MacDougall v. Green, 335 U. S. 281 (1948);
Colegrove v. Green, 328 U. S. 549 (1946);
Wood v. Broom, 287 U. S. 1, 8 (1932);
Johnson v. Stevenson, 170 F. 2d 108 (C. A. 5th Cir., 1948).

While in the true sense, the Fourteenth Amendment gives no right of suffrage it has been recognized that by reason of its self enforcing effect in operation its prohibition measurably has that result.

Ex parte Yarbrough, 110 U. S. 651;
Neal v. Delaware, 103 U. S. 70;
Guinn v. United States, 238 U. S. 347;
Civil Rights Cases, 109 U. S. 3.

State abridgment of voting rights, may be stricken as state action under the privilege and immunities, and the equal protection clauses of the Fourteenth Amendment.

Nixon v. Herndon, 273 U. S. 536, 540.

The right of a United States Citizen, when otherwise qualified to vote, is not only to cast his vote but to honestly have it counted at congressional elections.

United States v. Classic, 31 U. S. 299, 315;
Ex parte Yarbrough, 110 U. S. 651;
Wiley v. Sinkler, 179 U. S. 58, 64;
Swafford v. Templeton, 185 U. S. 487;
United States v. Mosley, 238 U. S. 383.

IN A REPRESENTATIVE SUIT, AS IS THE CASE AT BAR, THE COURT HAS REPEATEDLY HELD, THAT WHERE AS A RESULT OF THE VERY LITIGATION IN QUESTION, THE CONSTITUTIONAL RIGHTS OF ONE NOT A DIRECT PARTY WOULD BE IMPAIRED, AND HE HAS NO EFFECTIVE WAY TO PRESERVE THEM HIMSELF, THE COURT MAY CONSIDER THOSE RIGHTS AS BEFORE IT.

United States v. Raines et al., ... U. S. ....., 4 L. Ed. 2d 524, 80 S. Ct. ..... (Feb. 29, 1960);

National Assn. for Advancement of Colored People v. Alabama, 357 U. S. 449, 459, 460, 2 L. Ed. 1488, 1497, 1498, 78 S. Ct. 1163;

Barrows v. Jackson, 346 U. S. 249, 97 L. Ed. 1586, 73 S. Ct. 1031.

Second Ground.

The local Redevelopment Agency thus created by said Municipal Corporation, by evasive nullification of votes cast, became the proponent of a redevelopment plan to acquire federal funds and condemn private property. At adjudicatory hearings provided to consider said redevelopment plan by appellee Municipal Corporation appellant and other property owners in this representative suit, as opponents to the plan, diligently sought to, but were denied, an opportunity at all stages of the proceedings, to prepare and submit evidence, in opposition thereto, in violation of procedural due process.

The facts concerning the diligence and the efforts made to submit evidence, as aforesaid, without avail, are deemed to be true by all of the parties, to this appeal, as they constitute affirmative allegations pleaded by appellant to which appellees filed a general demurrer in the trial court, which demurrer was sustained without leave to amend.

For purposes of this appeal, then, said facts are deemed to be true.

References to the Clerk's Transcript hereunder appear in Appellant's pleadings before the trial court, Case No. 92497, being [4th Civil No. 5983, Ct. of Intermediate Appeals; Clk. Tr. pp. 1-22].

Said pleadings aver in substance as follows:

Pursuant to Sections 33564 and 33565 of the Health and Safety Code respondents first published in a newspaper of general circulation on the 10th day of February, 1958, a notice of date of hearing which was set for March 4, 1958. [4th Civil No. 5938; Clk. Tr. p. 16, line 24, to p. 17, line 9.]

On March 4, 1958, appellant and others similarly situated requested that they be provided a reasonable opportunity as interested persons to be heard and be given an opportunity to present evidence and testimony. [4th Civil No. 5983; Clk. Tr. p. 17, lines 11-21.]

It was further indicated at said meeting that the services of a duly qualified expert, to-wit: Henry A. Babcock had been retained to represent the objectors and the plaintiff was marshaling necessary facts and evidence which said Council was bound to consider. [4th Civil No. 5983; Clk. Tr. p. 18, lines 14-19.]

An application of continuance of three weeks was granted by said Common Council. [4th Civil No. 5983; Clk. Tr. p. 19, lines 1-3.]

Thereupon said expert searched for and sought to obtain evidence and marshal facts, sought to examine surveys, investigations, reports and information concerning blight, obsolescence, substandard conditions, and their effect upon public health and safety and general welfare

concerning said project area. That said matters were non-existent and not available for analysis and examination as a public record within said three weeks' period of time, as required by Section 33570 of the Health and Safety Code to be placed in the Ordinance file.

[4th Civil No. 5983; Clk. Tr. p. 19, lines 12-21.]

It became necessary for said expert to conduct original research in the premises, which could not be completed within said three weeks' period of time.

[4th Civil No. 5983; Clk. Tr. p. 19, lines 21-26.]

Notwithstanding the lack of opportunity to make a full and complete study, appellant and others similarly situated submitted a preliminary report by said expert, Henry A. Babcock, which indicated matters required additional study and analysis, to submit as evidence. [4th Civ. No. 5983; Clk. Tr. p. 23, subpages 34-44.]

[4th Civil No. 5983; Clk. Tr. p. 20, lines 13-16.]

At the date of the continued hearing *i.e.*, March 24, 1958, before the Appellee Municipal Corporation, the appellant again formally moved by verified petition in writing for additional time to present proper evidence, which application was arbitrarily and illegally denied by the appellee Municipal Corporation and thereupon on the following day, the 25th day of March, 1958, the first reading of said Ordinance No. 2217 was held, and the Ordinance was approved by said defendant Common Council. [4th Civil No. 5983; Clk. Tr. p. 20, lines 17-26. See Ex. 12, Clk. Tr. p. 26, subpage 50.]

The verified petition and reasons which made the same necessary on behalf of Appellee and the other persons therein described, for additional time, is set forth as [4th Civil No. 5983; Clk. Tr. p. 23, subpage 45, Ex. 11.]

That thereafter on the 31st day of March, 1958, a second reading of said Ordinance was held and prior to the reading thereof, appellant and other property owners similarly situated, again moved the Common Council to reconsider its prior action and grant petitioners and others similarly situated additional time to submit legal and proper evidence upon which to base findings. Said motion to reconsider and for additional time was denied, and the Ordinance was thereupon instead finally approved and passed. [4th Civil No. 5983; Clk. Tr. p. 21, lines 1-13.]

Under the terms of said Ordinance No. 2217, the City Clerk of the Appellee Municipal Corporation took steps as instructed by said Municipal Corporation Ordinance and recorded the same with the County Recorder of San Bernardino together with a description of the metes and bounds thereof, which recordation operates as a cloud upon the title of property of appellee and other property owners similarly situated and is restricting and will restrict its beneficial uses for many years to come. [4th Civil No. 5983; Clk. Tr. p. 21, lines 15-24.]

The impact of the tremendous task which suddenly had confronted the community was learned during the ensuing three weeks, following the first request for continuance; and a further continuance was requested, as a necessary part of the procedural due process which is guaranteed by law, as it was impossible within the limited time provided by the notice to be heard, to gather evidence, present, testimony and debate fully all aspects of the plan, which had been prepared to a large extent in stealth and secretiveness, by Appellee Redevelopment Agency which did not afford the opponents of the plan knowledge of the factual or evidentiary matters which were to be presented.

It was obvious that when the second motion for continuance was made, that the task thrust upon the opponents to fairly present the pertinent facts and the evidence, required the presentation of evidence relating to 99 acres, and several hundreds of owners of real estate. It became necessary to marshal this material in proper form.

> "The demand that there be an opportunity for a proper hearing, where property rights are involved, is a requirement of due process."
>
> *Ewing v. Casselberry*, 339 U. S. 594.

> "Procedural due process is based upon the opportunity to explore evidence, to insure a conclusion based upon reason and not merely arbitrary."
>
> *Jordan v. Am. Eagle*, 169 F. 2d 281.

> "Under the due process clause of the fifth amendment (Par. 1455, Ch. 42, Title 42, U. S. C. A. page 542. Federal requirement of hearing in Urban Renewal) adjudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except upon a hearing wherein each party shall have opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument." (Parenthesis added.)
>
> *Philadelphia v. Securities Exchange*, 175 F. 2d 808.

In order to seasonably procure and produce evidence, and particularly in view of the fact that the preliminary continuance had been granted without any prior condition set by said Appellee Municipal Corporation, and without any voiced opposition from anyone, appellants on the continued date in requesting a further continuance by

verified petition [4th Civil No. 5983; Clk. Tr. pp. 45-49] stated the competency of the evidence to be procured, and the probably legal effect of the expected evidence which could result in the rejection of the plan proposed by the Redevelopment Agency and were then and there informed, that they had already had their day in court, and that justice had been done.

The minutes of this adjourned meeting of said Council March 25 1958, read:

> "Councilman Howard made a motion, seconded by Councilman Blair and unanimously carried, that the 90 day extension, be rejected."

[4th Civil No. 5983; Clk. Tr. p. 23, folio 50 of Exs.].

As heretofore stated, the above facts are deemed to be true, for purposes of this appeal, as presented by the pleadings, and indicate, that appellants on March 31, 1958, again asked said Appellee Municipal Corporation to reconsider the motion made and the order, which had denied the request for additional time to submit legal and proper evidence, upon which to base findings, but the same was again denied.

[4th Civil No. 5983; Clk. Tr. p. 21, lines 3-13].

The record shows that on July 1, 1958, at a hearing provided to consider the Final Redevelopment Plan, appellants were still attempting to get said Municipal Corporation, without avail, to accept and consider evidence and to adopt some sort of rules of procedure for the presentation of evidence. An offer of proof was made, and denied. Said the attorney for Appellants:

> "All of this gentlemen of the Council, is original evidence by way of testimony in essential matters and factors upon which you will be called upon to

make determinations and all of these matters I have mentioned must be probed into in an open public hearing at the request of the opponents of the plan and in support of their contention that the Common Council ought to reject all plans for redevelopment in that particular area."

"Therefore, pursuant to Section 33730 of the Health and Safety Code, which requires that this Honorable Body shall consider all evidence and testimony for or against the adoption of the plans at a public hearing, we are here tonight requesting that the allotted time which we shall need be determined tonight. We further would like to know whether the hearing place shall be here in the chambers of the council and if necessary continuances are to be had where else we may then go."

"Section 34 of the City Charter of the City of San Bernardino allows this Common Council to adopt rules for such a hearing as is now required. This Council may compel the attendance of witnesses as well as the production of papers in any matters under investigation."

"It is our suggestion that in the adoption of the rules for compelling the attendance of witnesses and the production of papers in matters under investigation, we as attorneys for the property owners and occupants within the Project area, be advised by the Council of the type of notice or request which the Council may desire to compel the attendance of witnesses as well as the production of papers in matters under investigation."

"It is my next suggestion at this time that the Honorable Mayor call about three or four or five

minutes recess to enable him to confer with the City Attorney, who is present at the table with the Common Council, of and concerning the matters which I have here called to the attention of the Common Council."

[4th Civil No. 6243; Clk. Tr. p. 22, line 25, to p. 23, line 13.]

Appellees admit and do not deny that the above record was made before the State Municipal Corporation at the hearing provided for appellants.

If facts are alleged which set up a federal right in the pleadings upon a demurrer which proceeds to judgment, the Supreme Court is at full liberty to consider the facts alleged in the complaint.

Boyd v. Thayer, 143 U. S. 135;

Postal v. Newport, 247 U. S. 464.

The position of appellants as opponents at the hearing, was a disturbing one, as it became necessary to outguess the Redevelopment Agency as to the basis and nature of its evidence, which could have been drawn from a multitude of sources over a long period of time. The oral transcript of the evidence makes patent the arbitrary and capricious stand taken by the Council.

[See 4th Civil No. 6243; Clk. Tr. p. 29, line 14, to p. 31, line 14].

Mr. Jerome F. Sears, Jr., Executive Director of the Redevelopment Agency of the City of San Bernardino, as first witness for the Final Redevelopment Plan, said: [4th Civil No. 6243];

"There is in the files of the agency . . . certain additional information and data . . . personal information gained from interviews with site occupants

and owners of businesses located within the project area. This information was necessary in order to prepare this plan, BUT IT IS CONFIDENTIAL IN NATURE AND WILL BE TREATED AS SUCH BY THE AGENCY. HENCE THIS INFORMATION CAN NOT BE FILED WITH THE CITY CLERK AND MADE PUBLIC INFORMATION."

[See 4th Civil No. 6243; Clk. Tr. p. 19, lines 1-6].

A state Municipal Corporation functioning as an arm of the State in a matter of a State concern, to effectuate a State legislative objective, cannot qualify a local Redevelopment Agency for the purpose of its becoming the recipient of federal funds to develop said City, in a purposely discriminatory manner under color of a State enabling community redevelopment act, by the unconstitutional enforcement thereof.

The expressed vitriolic prejudice against allowing appellants to be represented by counsel appears in the Reporter's Transcript of the hearing wherein one of the City Councilmen of Appellee Municipal Corporation, with the apparent approval of the other Councilmen, stated that appellants attorneys were "carpetbaggers from Los Angeles."

The Urban Renewal Law, which provides capital grants and monies to authorized local public agencies, permits states to pass enabling legislation, to take advantage of federal assistance. One of the limitations is:

1. "No land for any project to be assisted under this subchapter shall be acquired by the local agency except after public hearing following notice of the date, time, place, and purpose of such hearing."

Par. 1455, Ch. 42, Title 42, U. S. C. A. p. 542.

The above Federal Law constitutes an affirmative prohibition, and direct limitation, upon states or their local municipal delegatees, and refers to a hearing which must be a meaningful hearing.

It has been contended by appellants, that both the State and Federal Constitutions have been abridged by the Municipal Corporation, *i.e.*, Council of the City of San Bernardino, in violating procedural due process in having denied property owners of a meaningful hearing.

Upon the state of the record below, the Municipal Corporation of the City of San Bernardino to whom the California state legislature had delegated the power to render a decision as a state agency, has qualified the Redevelopment Agency and approved a plan, whereby federal funds are being acquired to be used by said city. The project area to be condemned has been described and registered under shadow of condemnation, by metes and bounds, for purposes of the latter proceedings, and the use of the land by its owners and appellant herein is subject to said proceedings in eminent domain, as set forth in the official publication thereof. [4th Civil No. 5983; Clk. Tr. p. 17, lines 1-10. Ex. "8".]

In the case of *Home Tel. & Tel Co. v. The City of Los Angeles*, reported at 227 U. S. 278, a California corporation sued the City and certain of its officials to prevent the putting into effect of a city ordinance for lack of due process. The court refused to grant a restraining order or allow a preliminary injunction.

The case involved the proposition that state officers which abused powers lawfully conferred upon them did so in contravention of the due process clause of the State and the Federal Constitutions.

The Supreme Court of the United States laid down the rule of decision, that the provisions of the Fourteenth Amendment were generic in terms, and addressed not only to the States, but to every person, whether natural or judicial, who is the repository of state power. That the Federal judicial power may redress the wrong done by a state officer misusing the authority of the State with which he is clothed; under such circumstances inquiry whether the State has authorized the wrong is irrelevant.

The Supreme Court held that acts done under the authority of a Municipal ordinance passed in virtue of power conferred by the State are embraced by the Fourteenth Amendment.

The Supreme Court of California, in the case of *Maxwell v. City of Santa Rosa*, ... A. C. ..... (Sacramento No. 6293 filed December 18, 1959), involved an injunction against the City Council on the part of certain property owners who desired a determination that certain assessment proceedings were null and void.

Mr. Justice Peters observed that the City Councilmen actually complied with each procedural step required by law, but did so with fraudulent intent, and in order to arrive at a predetermined result contrary to the purpose and spirit of the law.

The contention of the property owners was sustained. The Court said that it made no difference whether plaintiff sought relief by injunction, mandamus, or in a declaratory form.

The public hearing required by federal law and the constitution as a condition for the acquisition of land for any project, must of necessity refer to a meaningful hearing wherein the owners of the land may present evidence pertinent to the matters at issue, which public hearing has been denied to appellants.

Par. 1455, Ch. 42, Title 42, U. S. C. A. p. 542.

Third Ground.

Under the circumstances in the case at bar, the State law did not provide adequate notice and opportunity to defend and present evidence in opposition to a redevelopment plan to qualify an Agency to procure federal funds to condemn property in an adjudicatory proceedings, in violation of due process, and were we to assume that the notice *prima facie* was not repugnant to the Constitution, procedural due process required an extension of time to have provided a meaningful hearing.

The residents and property owners of the Meadowbrook Project Area, represent the average cross-section of an American urban community, *i.e.*, they are in unrelated activities. Some may know their neighbors and others not particularly interested in knowing them, if at all, but slightly. Said residents were attending their daily routines, concerned with their particular family problems, and those economic tribulations which preoccupy the vast majority of middle and lower income groups, unmindful that the local newspaper would, on the following morning, publish a notice that a hearing would be had on the question of a tentative plan to redevelop their neighborhood. Some of the neighbors read the small detailed legally printed insertion late on the following afternoon, for the first time (4th Civil No. 5983). [Ex. 8; Clk. Tr. p. 23, (sub-page 33).] No articulate organization existed among them. Some individual groups contacted others, and after a week and a half had lapsed, an incipient organization composed of various elements of the community were sufficiently united to call the first meeting for the following week, of some of the property owners in opposition to the redevelopment plan, which was to be imminently submitted to the Common Council for its approval.

The boundaries of the area encompassed 99 acres, and involve in excess of 200 residential properties. The slightly more than three weeks notice was barely sufficient to enable a few of the affected persons to retain counsel to look preliminarily into the matter. Since the work of the Redevelopment Agency had been completed and the determinations which were to be made by the Common Council, already typed and ready for signatures, the first public hearing was of a perfunctory nature. A three weeks' continuance was granted to appellants upon request made by them, to enable them to examine and present evidence.

Many property owners lived away from the area. A large percentage could not speak or read English, or be found or located at the time. [4th Civil No. 6243; Clk. Tr. p. 28, lines 21-26.]

The Common Council was informed by appellants that the services of Henry A. Babcock, an expert of national prestige and reputation in such matters, had been preliminarily retained for such purpose in opposition to the plan submitted by the Agency, for the first time at said first alleged public hearing, and a reasonable period of time was needed, to marshal facts and evidence. [4th Civil No. 4983; Clk. Tr. p. 46, lines 24-32.]

In the case of *Walker v. The City of Hutchinson*, reported at 352 U. S. 113, the following language appears:

The appellant, Lee Walker, owned certain land in the City of Hutchinson, Kansas. The City filed an action to condemn part of this property. Notice was given to him by one publication in the official city paper, as in the case at bar.

Mr. Walker charged that the newspaper publication authorized by statute, was not sufficient notice to satisfy

the Fourteenth Amendment's due process requirement. After hearing, the Kansas Trial Court denied him relief holding that the newspaper publication was sufficient notice.

"The only question we find it necessary to decide is whether under the circumstances of this kind, newspaper publication alone measures up to the quality of notice that due process clause of the Fourteenth Amendment requires as a prerequisite to proceedings to fix compensation and condemnation cases."

"The right to a hearing is meaningless without notice. In Mullane v. Bank, 339 U. S. 306, we gave federal consideration to the problem of adequate notice under the due process clause. That case establishes the rule that, if feasible, notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests. We apply the same rule in Covey v. Town and Somers, 351 U. S. 141; See also City of New York v. New York, 344 U. S. 293."

"It is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property. In Mullane we pointed out many of the infirmities of such notice and emphasized the advantage of some kind of personal notice to interested parties. In the present case, there seemed to be no compelling or even persuasive reasons why such direct notice cannot be given. Appellant's name was known to the City and was on the official records. Even a letter would have apprised him that his property was about to be taken and that he must appear if he wanted to be heard as to its value."

"In too many instances, notice by publication is no notice at all. It may lead government authorities free to fix one-sidedly the amount that must be paid owners for their property taken for public use."

Fourth Ground.

In the proceedings leading up to the adoption of the redevelopment plan by ordinance, to acquire federal funds, said state Municipal Corporation in violation of due process under color of state law, misled its voters deceitfully by representing to them in open meeting that it was not functioning in an adjudicatory hearing but that it was functioning in a legislative capacity and when the voters in reliance upon the representation that said proceedings were legislative, circulated an admittedly sufficient petition for referendum against the municipal ordinance which adopted the redevelopment plan which came out of said proceedings, to condemn their properties. (App. B, p. 36, lines 20-31.) Appellee Municipal Corporation nevertheless contrary to its prior deceptive contentions, upon which the electors had relied, declared that it had not been functioning in a legislative capacity, but had been functioning in an administrative capacity.

The various steps which led up to the adoption of Municipal Ordinance 2217, the Tentative Plan, which preceded Municipal Ordinance 2233, the Final Plan, and served as the basis for the adoptive of the latter ordinance, are referred to in case 4th Civil No. 5983.

Pursuant to the State Court's decision (see 4th Civil No. 5983, *supra*) that Ordinance 2217 as to the Tentative Plan, was a legislative act *supra* [Clk. Tr. p. 73, line 4, to p. 75, line 4; 4th Civil No. 5983, and in view of the representations and position taken by Respondent

Common Council of the City of San Bernardino at the time of hearings [4th Civil No. 6243; Clk. Tr. p. 24, lines 29-32]; that its proceedings in adopting Ordinance 2233, or Final Plan, on this appeal, based on said Ordinance 2217 was also a purely legislative act, the electors of the Community of San Bernardino in reliance on said contentions made by respondents circulated a referendary petition pursuant to 121 of the Charter of the City of San Bernardino, which protested against said Ordinance 2233 which adopted the Final Redevelopment Plan, and requested that the Common Council submit said Ordinance 2233 to the electors. The facts above referred to in connection with the referendary petition are deemed admitted as true by appellees demurrer below and appear [4th Civil No. 2643; Clk. Tr. pp. 34 to 36] herein by way of the second count to Appellants pleadings.

During the time that said referendary petition referred to in said second count was being circulated by Appellants signatures counted, and sufficiency certified to by the City Clerk [4th Civil No. 2643; Clk. Tr. p. 52, lines 7-17] in keeping with the contentions of the State Municipal Corporation, that the proceedings which led to the adoption of Ordinance 2233, were legislative in nature, neither said Municipal Corporation nor the Redevelopment Agency, challenged the same, or sought by injunction to suspend the same, all of which was consistent with the representations and position theretofore taken by said Municipal Corporation in having denied plaintiffs the opportunity to present and introduce material evidence in opposition to the adoption of said Ordinance 2233 for the alleged reason given by said State Municipal Corporation at the public hearing thereon, that it was at all times exercising purely legislative acts. Ap-

pellants' efforts to present evidence appear in detail in the transcript of the oral proceedings referred to. [4th Civil No. 6243, Clk. Tr. p. 18, lines 11-32; p. 33.] (Second ground for appeal *supra*.)

When Appellee State Municipal Corporation however was advised of the success and sufficiency of the referendary petition, and appellants requested action by submission of the Ordinance to the electors, as required by law, appellants were told by said Municipal Corporation for the first time (which matter is conceded by the pleadings), contrary to the purposeful representations and position theretofore consistently taken by said Appellee Municipal Corporation, that the proceedings which had led to the adoption of Ordinance 2233 had at no time been legislative, but instead executive and administrative. And based upon said ground have refused to comply with the plain import of the City Charter of said Municipal Corporation, which this Supreme Court may independently examine in the light of the intentionally inconsistent acts and conduct of the officials of said Municipal Corporation, who have asserted said Charter provisions as a local bar to the federal constitutional deprivations herein specified.

Fifth Ground.

The local state judicial officers adopted irreconcilable decisions, separated only by a short lapse of time, to discriminate against appellant and in favor of the pattern of the Municipal Corporation, which at every step contrived to avoid the requirements of due process and the equal protection of the law.

When the legal point of due process was originally called to his attention, the first state judicial officer in

the State Court of first instance declared the law to be that the proceedings before the Municipal Corporation were legislative. When the legal point of an electors' referendary vote was called to the attention of the second judicial officer of the same court he declared the law to be that the only proceedings before the Municipal Corporation which were legislative was its original resolution that there was a need for the local redevelopment agency to function.

The first judicial officer on appellant's demand for procedural due process, declared that because the proceedings before the Municipal Corporation were legislative, appellant was devoid of any remedy of review in connection with due process. Having disposed of said issue, when the voters and electors of said Municipal Corporation circulated of an admittedly sufficient petition against the adoption by ordinance plan to condemn their properties, which the State law permitted provided the Municipal Corporation's act had been legislative, a second judicial officer of the same Court, for purposes of disposing of said issue, declared that the proceedings before the Municipal Corporation were not legislative.

Said first judicial officer used the following language:

> "The adoption of the tentative plan is not a judicial act but a legislative act. It is a decision of the Council which calls for judgment as legislators, in which event the Courts will never interfere unless there be fraud or abuse of discretion."

[4th Civil No. 6243; Clk. Tr. p. 96, lines 29-32].

Continued said judicial officer:

> "The plaintiff contends that the adoption of the tentative plan must be considered a judicial act be-

cause the Health and Safety Code provides for a hearing and the taking of testimony. But this alone is not determinative. These sections of the Health and Safety Code do not limit legislative discretion to only such decisions as can be justified by the evidence received at such hearings. The purpose of these sections is rather to assure to all parties a reasonable opportunity to be heard, to present testimony and to debate fully with the legislative body all aspects of the problem.

"The plaintiff's second contention, therefore, must be denied.

"Plaintiff's third contention is likewise based upon the theory that the adoption of the tentative plan is a judicial act and therefore subject to review. *Having already held that passage of such ordinance is a legislative act and, therefore, not subject to review, a further discussion of this contention is unnecessary.*" [4th Civil No. 6243; Clk. Tr. p. 97, lines 1-19.]

The second judicial officer of the same court in treating appellant's petition in appellant's request for writ of mandate in the right to referendum, however, did not see eye to eye with the above language used by the first judicial officer of the same Court, and instead held that the only legislative act; in all the steps set forth in the Health and Safety Code, which included both Ordinance 2217 on the Tentative Plan and Ordinance 2233 on the Final Plan, *was when the City Council, by resolution originally declared a need for the agency to function, in the following language*:

"In adopting this ordinance, *the Common Council was acting in an administrative capacity* for the pur-

pose of carrying out the declared legislative policy of the State of California as set forth in Health and Safety Code, Section 33047.

"Based upon these conclusions, the Court finds that the action of the Common Council in adopting Ordinance No. 2233 was administrative, not legislative, and therefore this Ordinance is not subject to referendum."

[4th Civil No. 6243; Clk. Tr. p. 151, lines 12-20].

"In the Court's opinion, the only legislative authority entrusted to the Common Council by the Community Redevelopment Law was the right to pass a resolution declaring a need for a redevelopment agency in San Bernardino."

[4th Civil No. 6243; Clk. Tr. p. 151, lines 26-29].

Appellants at no time have abandoned their contention that the proceedings before the State Municipal Corporation, on the Tentative Plan, were not legislative [4th Civil Appeal No. 5983, *supra*] *but appellants were, by reason of the different and conflicting position taken by said Common Council, and patently conflicting opinions by two judicial officers of the same Lower Court,* placed in an awkward position which the State Courts have continued to condone in depriving appellant of due process and the equal protection of the law.

The United States Supreme Court has the duty to make its own independent examination of the record to determine facts when federal constitutional deprivations are alleged.

Napue v. People of State of Illinois, 360 U. S. 264, 3 L. Ed. 2d 1217.

If the Constitution and laws of the United States are to be enforced, this Court cannot accept as final the decision of the State tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds.

Davis v. Wechsler, 263 U. S. 22.

IF DUE PROCESS HAS BEEN DENIED TO PETITIONER AND OTHERS SIMILARLY SITUATED, IN THE EXERCISE OF THEIR RIGHTS, IN AND TO PROPERTY, BY A STATE COURT BY THE SIMPLE EXPEDIENT OF CALLING AN ADJUDICATORY PROCEEDINGS A LEGISLATIVE ACT, AND BY CALLING A LEGISLATIVE ACT, AN ADMINISTRATIVE ACT, THE SUPREME COURT MAY EXAMINE THE FACTS, AS SET FORTH IN THE PLEADINGS TO WHICH A DEMURRER WAS SUSTAINED WITHOUT LEAVE TO AMEND AND PROPERLY CLASSIFY THE NATURE OF THE PROCEEDINGS WITH RELATION TO THE FACTS IN THE CASE AT BAR, THE DEFINITION OF THE STATE COURT TO THE CONTRARY NOTWITHSTANDING.

Whether a State Court, in basing a decision on non federal grounds, as thereby sought to evade constitutional issues, is a question on which a litigant is entitled to invoke the judgment of the Supreme Court, though the existence of the right for which Constitutional protection is claimed depends on state law.

Fox v. River Paper Co., et al. v. R.R. Commission of Wisconsin, 274 U. S. 651, 71 L. Ed. 1279.

Sixth Ground.

With an abundance of caution, appellants at the time of the hearings which led to the adoption of the final plan, offered to resubmit original testimony and evidence in opposition to the determinations made, on the tentative plan, and the final plan, but were precluded from doing so by Respondents who represented that the hearings on said final plan were purely legislative, and not adjudicatory. [4th Civil No. 6243; Clk. Tr. p. 24, lines 29-32.]

No judicial review is provided by state law of the proceedings concerning Municipal adoption of the "tentative plan" for redevelopment although the state law makes the same adjudicatory proceedings. While it may be true that a review is not guaranteed by fundamental law, the absence of a judicial review does not deprive appellants nevertheless to the protection of her constitutional rights and she cannot be deprived of her liberty or property without due process of law.

Since the right to a review on the adoption of the "Final Plan" for redevelopment is limited to findings concerning local matters of public policy, the review provided therefor is of no import, in that the wisdom of the governing body and the soundness of its economic policy in adopting the final plan is not a proper subject of attack by way of review.

When the local legislative body adopted the final plan for redevelopment it determined that it was based upon the tentative plan for redevelopment, appellant's inquiry on review may go no further than to inquiry whether it is based upon the tenative plan for redevelopment (California Health and Safety Code, Sections 33703 and 33747).

Because of the above, the appellant has sincerely sought the remedies of the extraordinary writs, to protect her property rights and prevent the taking of her land by a land acquisition proceedings called "Tentative Plan," "after the adoption of a Final Plan based thereon."

Section 33740 of the State Health and Safety Code, provides that the determinations of a legislative body in the adoption of any redevelopment plan may be judicially reviewed by a State Court of competent jurisdiction providing such action is brought within a period of 90 days after the date of adoption of the ordinance approving the plan.

Said section further provides that no action shall be brought prior to the adoption of the Final Redevelopment Plan.

In the case at bar, the legislative body, delayed more than 90 days to adopt the Final Redevelopment Plan, after the adoption of the so-called Tentative Plan.

Inasmuch as appellants could only seek a judicial review within a period of 90 days after the adoption of the Tentative Redevelopment Plan, and could not institute an action for judicial review until the Final Redevelopment Plan was adopted, the local legislative body left the opponents of a redevelopment plan remediless, by the simple expedient of having adopted the Final Redevelopment Plan, after 90 days had lapsed from the date of the adoption of a tentative plan.

The judicial review is not encompassed within the provisions of the Administrative Procedure Act of the State, nor are any standards referred to. The wording of the statute by the State Legislature may cause a review of any tentative plan to depend upon the fortuitous date of

enactment of a final plan. Thus, said code section has placed two limitations upon appellant's right of review, *i.e.*, that it must be brought within 90 days after the date of the adoption of the ordinance approving the plan, and, secondly, that the action may not be brought prior to the adoption of the final redevelopment plan. Under the said decision of said District Court, literal and exact compliance is impossible in the circumstance of the present case, wherein appellant seeks to complain of the Ordinance approving the "tentative plan" since more than 90 days lapsed before the Common Council adopted the final plan.

Decisions with regard to limitations of time, upon the subject of review are clear, that the courts cannot afford protection to a litigant unless such provisions are strictly complied with:

> "The general policy of our law is not unfavorable to judicial review of administrative proceedings. But it is the policy of our law that time limits for filing notices of appeal in all legal proceedings must be complied with literally and exactly."
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> *Hollywood Circle v. Dept. of Alcoholic Control*, 153 Cal. App. 2d 107;
>
> *Estate of Hanley*, 23 Cal. 2d 120;
>
> *Tennant v. Civil Service Com.*, 77 Cal. App. 2d 489.

In Conclusion.

The first appeal in the State Court [4th Civil No. 5983], relates to the *prima facie* sufficiency of facts pleaded which recite the lack of authority in Appellee Municipal Corporation from having legally activated or established a local redevelopment agency as well as the various illegal steps, in violation of due process, which led to the enactment by ordinance of a "Tentative Redevelopment Plan" for said Meadowbrook Project, in excess of the Court's jurisdiction.

A second appeal, or companion appeal in the State Court [4th Civil No. 6243], related to the *prima facie* sufficiency of facts pleaded concerning various illegal steps, in violation of due process, which led to the enactment by ordinance of a "Final Redevelopment Plan," as well as a consideration of the binding effect of the referendary petition certified as sufficient by the City Clerk of said Municipality which protested the adoption of said ordinance, which referendum Appellant contended in said appeal, required the submission of the Municipal Ordinance to a vote of the electors.

As indicated in the record, this appeal is also from the judgment and order [4th Civil No. 6243; Clk. Tr. p. 195, lines 25-26] which denied Appellant application for a preliminary injunction.

Appellee Redevelopment Agency, pursuant to Par. 33701 of the California Health and Safety Code, is vested with the authority to implement the plan and its operation, and the need for such injunction is manifest by

the action of Appellee Municipal Corporation, in that said Municipal Corporation seven days after the adoption of Ordinance 2233, passed a resolution to execute local grant in aid and cooperation, with the redevelopment agency [4th Civil No. 6243; Clk. Tr. pp. 58, 89]. Multitudinous steps involving expenditures of tax funds have since been taken and are continuing to take place.

The supporting affidavit of Attorney Alexander Ruiz for Appellant, that the pendency of proceedings for redevelopment and the recordation of the same under Paragraph 33573 of the California Health and Safety Code, constitutes a cloud upon Appellant's title and has depreciated the value of said property and has continued to limit its use because of said illegal proceedings, [4th Civil No. 6243; Clk. Tr. p. 83, lines 16-25].

Wherefore it is prayed:

1. That the unjustly discriminatory actions of the State Municipal Corporation, under color of state law, in having abridged the electors privileges as United States citizens and thereby activated and created a local redevelopment agency by legislative act to receive federal funds, be held in violation of the Constitution.

   That the unjustly discriminatory actions of the State Municipal Corporation, under color of state law, in having abridged the electors privileges as United States citizens, by rendering ineffective and nugatory, their petition for redress by referendum, in the light of fraud exercised by local Municipal officials, be held in violation of the Constitution

2. That the demurrer of appellee City of San Bernardino [4th Civ. No. 5983, pp. 44-45] and the demurrer of appellee Redevelopment Agency [4th

Civ. No. 5983, pp. 28-30] to Appellant's Petition for Writ of Mandate [4th Civ. No. 5983; Clk. Tr. pp. 1-23] sustained by the State Court of first instance without leave to amend [4th Civ. No. 5983, pp. 72-79], on unconstitutional proceedings, be overruled; that the demurrer of Appellee City of San Bernardino [4th Civ. No. 6243, Clk. Tr. pp. 101-102], and the demurrer of Appellee Redevelopment Agency [4th Civ. No. 6243, Clk. Tr. pp. 104-105], to Appellant's Petition for Writ of Mandate [4th Civ. No. 6243, Clk. Tr. pp. 81-88], sustained by the State Court of first instance without leave to amend [4th Civ. No. 6243, pp. 64-66] on unconstitutional proceedings, be overruled.

3. That the Petition for Judicial Review pending before the state court of first instance [4th Civ. No. 6243 pp. 1-36], he stayed until such time as the state Municipal Corporation City of San Bernardino, shall make available to Appellant and other persons similarly situated, a hearing upon an adjudicatory proceedings, and permit therein an opportunity to Petitioner and other interested parties to produce and present material evidence, in accordance with proper procedural rules in compliance with due process of law.

4. That this Court adjudge Ordinance or Resolution No. 2361 which activated or created the local Redevelopment Agency [4th Civ. No. 5983, Clk. Tr. p. 23, subpage 1, lines 4-6] being a legislative act [4th Civ. No. 6243, Clk. Tr. p. 151, lines 26-29], as well as Ordinance No. 2217 which adopted the Tentative Redevelopment Plan [4th Civ. No. 5983,

p. 23, subpages 8-32], and Ordinance No. 2233, which adopted the Final Redevelopment Plan [4th Civ. No. 6243, referred to at Clk. Tr. pp. 18-33] as being based upon said Tentative Plan, as illegal and invalid Municipal Ordinances.

5. That Appellees be restrained and enjoined from continuing to exercise excessive power in violation of the fundamental charter, as well as expending tax monies and monies federally appropriated, by carrying forward or executing any of the objects and purposes of either the Tentative or Final Redevelopment Plan hereinabove specified.

Respectfully submitted,

MANUEL RUIZ, JR.,
Attorney for Appellant.

ALEXANDER RUIZ,
Of Counsel.

APPENDIX "A."

TEXT AND STATUTES INVOLVED.

Proposition Voted Upon by the Electors of Appellee Municipal Corporation.

ARGUMENTS

To be submitted to the Electors of the City of San Bernardino at the Election, November 7, 1950.

...ll the Mayor and Common Council of the City of San Bernardino create and establish a redevelopment agency pursuant to the provisions of the California Community Redevelopment Act?	YES	
	NO	

Argument in Favor of Measure A

...n Bernardino Voters and Taxpayers

As an intelligent and responsible citizen ... our community, suppose you discovered ...at

1 Eight per cent of our total city area consists of blighted deteriorated neighborhoods containing twenty per cent of our total population.
2 Here occur 26 per cent of our fires
3 Here are 36 per cent of our juvenile delinquency.
4 Here occur 42 per cent of adult crimes.
5 Here are 76 per cent of our tuberculosis.

Further, as a dollar and cents proposition, you discovered that all the rest of our ...y (you included), paid many thousands ... dollars in additional taxes because of ...preciated values in these blighted areas! ... And nothing was being done about it! Sacramento faced these facts. Actually, ...e above figures are from that city where ... Community Redevelopment Agency has ...t finished the first assignment given it ... citizens, Mayor and City Council. The ...signment was "Get the facts!"

We all know something like the situation ...scribed above is taking place in San ...rnardino. The sad truth is, you can't get ...e facts! Authentic, reliable, comprehen...ve figures are unavailable.

Thus we lag far behind many progressive ...lifornia cities. Why? Whose special in...rests are being served by those who fear ... have the citizens of San Bernardino ...arn the facts? . . . Certainly not the citi...s!

Remember, at this point we are not look...g for solutions. We want factual, basic ...udies undertaken in order to decide upon ... intelligent course of community action. ...is has nothing to do with (1) "Public ...using"; (2) "Federal bureaucrats run...g local affairs"; or (3) "Further tax ...ds imposed by politicians"!

...For the good of our community vote ...ES" on the proposal to have our Mayor, ...th City Council approval, appoint a ...unicipal Redevelopment Agency" to get ...e facts.

CITIZEN'S COMMITTEE TO SECURE APPOINTMENT OF AGENCY BY CITY TO STUDY NEED FOR URBAN REDEVELOPMENT AND SLUM CLEARANCE
By GEORGE C. BLAIR,
Chairman

Argument against Measure A

Establishment of this agency should be defeated

1 This so-called slum clearance and low cost housing is actually an entering wedge for public housing which is nothing more than socialized political housing.

2. The proposed agency will be tied irrevocably to the Federal Housing Act if this resolution is passed and Federal grants accepted. We would then be subject to bureaucratic red tape, control and extravagance, which means increased taxation and less take home pay.

3. Many good homes which are not slums will be condemned, resulting in excessive waste of your tax money.

4 A local housing authority has very little power. REMEMBER! A Federal agency in Washington dictates policy when it grants money for subsidies. These Federal grants must also be matched by YOUR TAX MONEY. Every government hand-out is made possible only by the taxpayer's "hand-in".

5 There is no known limit to the cost of this program. Even proponents of this measure are unable to estimate the ultimate cost of "Community Redevelopment" to the taxpayer. It may run into millions of dollars! And its benefits are extremely doubtful!

6 It is unnecessary to create another government agency to do what our own city administration already has power to do, namely, to condemn and eliminate unsanitary and sub-standard dwellings. Local authorities have the power under Section 17,821 and following sections of the State Housing Act to compel owners and landlords to put sub-standard housing in proper condition at their expense.

If we accept this socialized housing scheme promoted from Washington we are going farther down the road to Socialism. Too many Americans are being hoodwinked already! Here in California and in the cities where this program has been submitted to a vote of the people it has been rejected in every case. LET'S DO IT HERE!

VOTE NO!

SAN BERNARDINO
REAL ESTATE BOARD

COUNTY
SAN BERNARDINO

San Bernardino, California

Certificate of the County Clerk to the Result of the Canvass of Election Returns.

State of California, County of San Bernardino—ss.

I, HARRY L. ALLISON, County Clerk of said County, do hereby certify that in pursuance of the provisions of Section 7921(b) of the Elections Code, and of the resolution of the Board of Supervisors of said County, heretofore canvass the returns of the vote cast in the City of San Bernardino on Proposition A, Redevelopment Agency, at the General Election held on November 7, 1950; and that the result shows the whole number of votes cast in said City on said Proposition to be as follows:

YES	8,575
NO	10,286

WITNESS my hand and official seal this 26th day of November, 1951.

HARRY L. ALLISON

State of California, County of San Bernardino; City of San Bernardino—ss.

I, JACK T. FELTON, City Clerk in and for the City of San Bernardino, DO HEREBY CERTIFY that the attached Certificate of the County Clerk to the Result of the Canvass of Election Return, is a full, true and correct copy of that now on file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of San Bernardino, this ..... day of April, 1958.

JACK T. FELTON
City Clerk.

Legislative Resolution Which Created and Activated Appellee Local Redevelopment Agency.

City of San Bernardino, Califonria

June 11, 1959

The following is an extract from the minutes of the meeting of the Mayor and Common Council of the City of San Bernardino, held on the 23rd day of June, 1952:

"A regular adjourned meeting of the Mayor and Common Council of the City of San Bernardino held on the 23rd day of June, 1952, at 7:30 P.M. The meeting was called to order by Mayor George C. Blair, the following members being present: Councilmen Kirk, Hoien, Duncan, Howard and Kremer, and, City Attorney Willhoft.

"RES. 2361—ACTIVATING REDEVELOPMENT AGENCY

FINAL

A resolution of the Mayor and Common Council of the City of San Bernardino establishing a need for and activating of a Redevelopment Agency of the City of San Bernardino, was read for final passage and adopted by the following vote, to-wit: Ayes: Kirk, Hoien, Duncan, Howard, Kremer. Noes: None. Absent: None.

"Motion by Councilman Duncan, duly seconded by Councilman Hoien and carried unanimously, that the meeting adjourn to meet on Monday, June 30, 1952, at 7:30 P.M.

/s/ JACK T. FELTON
City Clerk"

State of California County of San Bernardino, City of San Bernardino—ss.

I, JACK T. FELTON, City Clerk in and for the City of San Bernardino, DO HEREBY CERTIFY that the foregoing extract from the minutes of the meeting of the Mayor and Common Council held on the 23rd day of June, 1952, is a full, true and correct copy of that now on file in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of San Bernardino, this 11th day of June, 1959.

JACK T. FELTON
City Clerk.

[Seal]

Ordinance Passed by Appellee Municipal Corporation No. 2217, Which Adopted the Tentative Redevelopment Plan.

Text of the ordinance which approved the adoption of the Tentative Redevelopment Plan by appellee municipal corporation appears in the Clerk's Transcript, 4th Civil No. 5983, at page 23, sub-pages 8 to 32. (Lodged with Clerk of Supreme Court.)

Because of its extreme length, it is not set forth at this juncture of the jurisdictional statement.

It is contended by Appellant, that an examination of said ordinance, will indicate on its face, by reason of the determinations required to be made by the Appellee Municipal Corporation, that hearings in connection with the Ordinance passed, were required to be of a quasi-judicial nature.

Ordinance Passed by Appellee Municipal Corporation Which Adopted the Final Redevelopment Plan and Based Upon the Tentative Redevelopment Plan.

ORDINANCE NO. 2233

AN ORDINANCE OF THE CITY OF SAN BERNARDINO APPROVING THE REDEVELOPMENT PLAN FOR THE MEADOWBROOK PROJECT AREA NO. 1; AND DESIGNATING SAME AS THE OFFICIAL REDEVELOPMENT PLAN FOR SAID PROJECT AREA.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO DO ORDAIN AS FOLLOWS:

WHEREAS, the citizens of the City of San Bernardino are proposing to redevelop portions of this City under the Community Redevelopment Law of the State of California through the instrumentality of the Redevelopment Agency of the City of San Bernardino, California, hereinafter called the "Agency"; and

WHEREAS, the redevelopment plan prepared by the Agency must be approved by this Council before it can be executed; and

WHEREAS, under the provisions of the Housing Act of 1949, as amended, the Housing and Home Finance Administrator is authorized to provide financial assistance to local public agencies for undertaking and carrying out urban renewal and redevelopment projects; and

WHEREAS, it is provided in such act that contracts for financial aid thereunder shall require that the redevelopment plan for the respective project area be approved by the governing body of the locality in which the project is situated and that such approval include findings by the governing body that (1) the financial aid to be provided

in the contract is necessary to enable the project to be undertaken in accordance with the redevelopment plan; (2) the redevelopment plan for the redevelopment area will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the redevelopment of such area by private enterprise; and (3) the redevelopment plan conforms to a general or master plan for the development of the locality as a whole; and

WHEREAS, the Agency has applied for financial assistance under such act and has entered into a contract for financial assistance under such set with the United States of America, acting by and through the Housing and Home Finance Administrator, pursuant to which Federal Funds are provided for the redevelopment project known as the Meadowbrook Project Area No. 1 in the City of San Bernardino, California, hereinafter called "Project"; and

WHEREAS, the Agency has applied for additional financial assistance under such act, and proposes to enter into an additional contract or contracts with the Housing and Home Finance Administrator for making available additional financial assistance for said Meadowbrook Project Area No. 1; and

WHEREAS, there has been prepared and submitted to this Council for review and approval a redevelopment plan identified as "Redevelopment Plan for Meadowbrook Project Area No. 1," hereinafter called the "Redevelopment Plan," consisting of thirty pages and eighteen exhibits. This Plan is supported by supplementary material, data, and recommendations entitled: (1) Reuse and Marketability Study, (2) Financial Feasibility Study, (3) a detailed property appraisal, (4) Ownership Data Reports prepared by the Title Company, (5) a complete

structural, occupancy, and use survey of all buildings within the project area, and personal data developed from interviews with site occupants and businesses located within the project area, which material, data and recommendations are not a part of said Redevelopment Plan; and

WHEREAS, the Planning Commission of the City of San Bernardino, which is the duly designated and acting official body for this City, has submitted to this Council its report and recommendations respecting the Redevelopment Plan submitted by the Agency and has found that said Redevelopment Plan conforms to the Master Plan of the City, and this Council has duly considered said report, recommendation, and findings of the said Planning Commission; and

WHEREAS, a Master Plan has been prepared and is recognized and used as a guide for the general development of the City of San Bernardino as a whole; and

WHEREAS, said Redevelopment Plan prescribes certain land uses for the Project Area and will require, among other things, (changes in zoning), the location and removal of streets, alleys and other public ways, the establishment of new street patterns, the location and relocation of sewer and water mains and other public facilities, and other public action; and

WHEREAS, the Agency has prepared a plan for the relocation of families that may be displaced as a result of carrying out the Project in accordance with said Redevelopment Plan and has submitted to this Council a Relocation Plan for the Project, identified as "Relocation Plan for Meadowbook Project Area No. 1" (Exhibit No. 16 of said Plan); and

WHEREAS, there has also been presented to this Council a relocation report containing information and data respecting the Relocation Plan which has been prepared by the Agency as a result of studies, surveys, and inspections in the Project Area and the assembling and analysis of the data and information obtained from such studies, surveys, and inspections; and

WHEREAS, the members of this Council have general knowledge of the conditions prevailing in the Project Area and of the availability of proper housing in the City of San Bernardino for the relocation of families that may be displaced from the Project Area and, in the light of such knowledge of local housing conditions, have carefully considered and reviewed such Relocation Plan; and

WHEREAS, it is necessary that this Council take appropriate official action respecting the Relocation Plan and the Redevelopment Plan for the Project, in conformity with the Community Redevelopment Law of the State of California and in conformity with the contract or contracts for financial assistance between the Agency and the United States of America acting by the Housing and Home Finance Administrator;

SECTION ONE. It is hereby found and determined as follows: (1) The California Community Redevelopment Law, part 1, division 24, of the Health and Safety Code of the State of California created the Redevelopment Agency of the City of San Bernardino. This Agency was authorized to transact business and exercise its powers by Resolution No. 2. 1 of this Council adopted June 23, 1952.

On September 2, 1952, by its Resolution No. 2419, this Council appointed five resident electors of the City of San Bernardino as members of the Redevelopment Agency of the City of San Bernardino, fixed their term, and designated the first Chairman under the provisions of said Community Redevelopment Law.

(b) This Council by its Resolution No. 2583 adopted February 3, 1953 designated the area therein described as "Redevelopment Area No. 2" pursuant to the Community Redevelopment Law. Resolution No. 2903 was subsequently amended by Resolution No. 4256, adopted January 14, 1957, revising the boundaries of "Redevelopment Area No. 2." Resolution No. 4256 was subsequently amended by Resolution No. 4525, adopted October 7, 1957, revising the boundaries of "Redevelopment Area No. 2."

(c) On February 9, 1954 and May 12, 1954, the Planning Commission of the City of San Bernardino adopted its Resolutions No. 1 and 3, selecting and designating the area therein described as "Redevelopment Project Area No. 1" and adopting a preliminary redevelopment plan for said project area, in accordance with the Community Redevelopment Law of the State of California.

(d) On January 30, 1958, by its Resolution No. 49, the Redevelopment Agency of the City of San Bernardino approved and adopted a Tentative Plan for the redevelopment of Meadowbrook Project Area No. 1, based on the Preliminary Plan for such Project area approved by the Planning Commission, which approval and adoption by said Agency was subsequent to a public hearing on such Tentative Plan held by the Agency on January 30, 1958, pursuant to notice as required by law. The Planning Commission of the City of San Bernardino by its Reso-

lution, adopted February 4, 1958, recommended to this Council approval of said Tentative Plan. The Agency thereafter presented the Tentative Plan and a report thereon to this Council.

(e) This Council set the time and a place for a public hearing on the adoption of the Tentative Plan so presented to it as March 4, 1958, at the United States Army Reserve Armory in San Bernardino, and gave notice thereof as required by law; and that hearing was duly held on the date and at the time and place fixed therefor. At said hearing, testimony for and against the Tentative Plan was heard. This Council thereafter adopted Ordinance No. 2217, passed March 31, 1958, based upon a consideration of the testimony and evidence presented at the hearing, and upon the recommendation and report of the Planning Commission, approving the said Tentative Plan.

(f) On May 20, 1958, the Redevelopment Agency of the City of San Bernardino, by its Resolution No. 56, adopted and approved a Redevelopment Plan for the Meadowbrook Project Area No. 1, based upon the Tentative Plan already referred to, and submitted the same to the Council and to the Planning Commission of the City of San Bernardino.

(g) On June 4, 1958, the Planning Commission of the City of San Bernardino made its report and recommendation, finding that the Redevelopment Plan above referred to conforms to the Master Plan adopted by the Planning Commission and this Council, which report and recommendation recommends approval and adoption of the said Redevelopment Plan by this Council.

(h) This Council set the time and place for a public hearing on the adoption of the Redevelopment Plan so

presented to it as July 1, 1958, at the Municipal Auditorium in San Bernardino, and gave notice thereof as required by law; and that hearing was duly held on the date and at the time and place fixed therefor. At said hearing this Council proceeded to consider the said Redevelopment Plan submitted by the Redevelopment Agency of the City of San Bernardino, and all evidence and testimony for or against the adoption of the plan. No alternative plan or plans for the redevelopment of said project area have been presented to the Council at any time. All of the actions recited in this section were regularly taken, as required by law, and none of them has been modified or repealed except as recited above.

SECTION TWO: This Council further finds and determines as follows:

(a) The full details of the Redevelopment Plan approved by this Ordinance are contained in the document entitled "Redevelopment Plan for Meadowbrook Project Area No. 1" adopted by the Redevelopment Agency of the City of San Bernardino May 20, 1958, and in the maps and exhibits contained therein and other reports referred to and incorporated therein.

(b) The only expenditure of money provided for by the City of San Bernardino in the Redevelopment Plan, as distinguished from expenditures by the Agency, involves the widening of Arrowhead Avenue between Rialto Avenue and Third Street and the construction of a new bridge on Arrowhead Avenue at Warm Creek, and the institution of proceedings for opening, closing, widening, or changing the grades of city streets and alleys and for other modification of street layout. The amount of such expenditures for work to be provided in the future cannot be exactly determined; but there are sufficient moneys

allocated under Gas Tax Projects No. 182 of the City of San Bernardino to construct said bridge. There are sufficient moneys allocated under Gas Tax Project 192 of the City of San Bernardino to widen Arrowhead Avenue as aforesaid, and the "City Administrative Officer is directed to include sufficient moneys to provide for the institution of proceedings for opening, closing, widening, or changing grades of city streets and alleys and for the modifications of street layout in his budgetary requests to this Council as may be necessary from time to time and this Council will approve them."

(c) The Redevelopment Plan provides for the opening, closing, widening and changing the grade of certain streets and alleys, and other modifications of the street layout in the Project Area. This Council hereby declares its intention to institute proceedings therefor at the time when such action is required by the execution of the Redevelopment Plan. The Redevelopment Plan also provides for changes in zoning in the Project Area. This Council hereby declares its intention to institute proceedings therefor at the time when such action is required by the execution of the Redevelopment Plan.

(d) The Redevelopment Plan provides for the condemnation of many of the land and improvements in the Project Area and contains adequate provisions for payment for the property to be acquired out of funds to be made available by the Housing and Home Finance Administrator pursuant to Title I of the Housing Act of 1949, as amended, together with local grants in aid to be made by the Agency from the proceeds of its bond issue proposed in the Redevelopment Plan.

(e) The Redevelopment Plan provides for the issuance of bonds by the Agency. The provision for the payment of the principal and interest on said bonds, when they be-

come due and payable, from excess tax collections within the Project Area, as provided in article 4, chapter 5 of the Community Redevelopment Law and section 19 of Article XIII of the California Constitution, is adequate, in the opinion of this Council. The Redevelopment Plan also provides for the issuance of obligations of the Agency evidencing the indebtedness of the Agency to the Federal Government or to private sources pursuant to the additional contract or contracts for financial assistance hereinbefore referred to. The provision in the Redevelopment Plan for the payment of the principal and interest on said obligations, when they become due and payable, from the proceeds of the disposition of project land and from the capital grant or grants from the Federal Government pursuant to such contract or contracts is adequate, in the opinion of this Council.

(f) The Redevelopment Plan provides for the temporary or permanent displacement of occupants of housing facilities in the Project Area. This Council finds that adequate permanent housing facilities are or will be made available within this City for such displaced occupants at rents comparable to those in this City at the time of their displacement. This Council is satisfied that such permanent housing facilities will be made available within three years from the time such occupants are displaced and that pending the development of such facilities there will be available to such displaced occupants adequate temporary housing facilities at rents comparable to those in this City at the time of their displacement. The Relocation Plan and Report, which is a part of the Redevelopment Plan, submitted by the Agency to carry out the relocation of occupants of the Project Area is feasible.

(g) The Redevelopment Plan contains adequate safeguards that the work of redevelopment will be carried

out pursuant to the Redevelopment Plan; and it provides for the retention of controls and the establishment of restrictions and covenants running with the land sold or leased for private use for periods of time and under conditions specified in the plan, which this Council deems necessary to effectuate the purpose of the Community Redevelopment Law.

SECTION THREE. The following is a legal description of the boundaries of the Project Area covered by the Redevelopment Plan:

Beginning at the intersection of the Westerly prolongation of the South line of Athol Street with the West line of "E" Street; Thence Northerly along said West line of "E" Street to a point 196.75 feet South of the center line of Second Street; thence Easterly and parallel to the center line of Second Street to the West line of Stoddard Avenue; thence Northerly along the West line of Stoddard Avenue and the Northerly prolongation of the West line of Stoddard Avenue to the North line of Second Street; thence Easterly along the North line of Second Street to the West line of Lot 1, Block 13 of the City of San Bernardino, as per plat recorded in Book 7 of Maps at Page 1, Records of the County Recorder of San Bernardino County; thence Northerly along the West line of said Lot 1 a distance of 253.15 feet; thence Easterly and parallel to the North line of Second Street a distance of 150 feet to the West line of "D" Street; thence Northerly along the West line of "D" Street to the Westerly prolongation of the North line of Lots 7 and 8 of the Keir's Subdivision as per plot recorded in Book 13 of Maps, at page 14, Records of the County Recorder of San

Bernardino County; thence Easterly along the Westerly prolongation of the North line of said Lots 7 and 8, the North line of said Lots 7 and 8, and the Easterly prolongation of the North line of said Lots 7 and 8, to the East line of Keir Place or Common Alley Way as shown on the map of said Keir's Subdivision; thence Northerly along the East line of said Keir Place or Common Alley Way to a point 6 feet South of the North line of said Keir's Subdivision; thence Easterly and parallel to the North line of said Keir's Subdivision, 21 feet, to a point 43.02 feet West of the East line of Lot 4, Block 19 of said City of San Bernardino; thence Northerly and parallel to the East line of said Lot 4 to a point 66.10 feet South of the center line of Court Street; thence Easterly and parallel to the center line of Court Street 43.02 feet to the East line of said Lot 4; thence Southerly along the East line of said Lot 4 to a point 55 feet South of the South line of Court Street; thence Easterly and parallel to the South line of Court Street to a point 77.33 feet West of the East line of Lot 3 of said Block 19; thence Southerly and parallel to the East line of said Lot 3 to a point 130 feet North of the North line of Third Street; thence Easterly and parallel to the North line of Third Street a distance of 39.66 feet; thence Northerly and parallel to the East line of said Lot 3 to a point 175 feet North of the North line of Third Street; thence Easterly and parallel to the North line of Third Street to the West line of Lot 2 of said Block 19; thence Southerly along the West line of said Lot 2 to a point 130 feet North of the North line of Third Street; thence Easterly and parallel to the North line of Third Street to a point 27

feet East of the West line of Lot 1 of said Block 19; thence Southerly and parallel to the West line of said Lot 1 to a point 150 feet South of the South line of Court Street; thence Easterly and parallel to the South line of Court Street to the East line of Arrowhead Avenue; thence Southerly along the East line of Arrowhead Avenue to the South line of Third Street; thence Westerly along the South line of Third Street to a point 101.25 feet East of the Northwest corner of Lot 5, Block 14 of the said City of San Bernardino; thence Southerly and parallel to the East line of "D" Street to a point 7 inches South of the South line of said Lot 5; thence Easterly and parallel to the South line of said Lot 5 to a point 117.71 feet West of the East line of Lot 4 of said Block 14; thence South to a point 1.8 feet South of the South line of said Lot 5; thence Easterly and parallel to the South line of said Lot 5 to a point 81 feet West of the East line of said Lot 4; thence North 1.8 feet to the South line of said Lot 5; thence Easterly along the South line of said Lot 5 to the Southeast corner of said Lot 5; thence Southerly along the West line of Lot 7 of said Block 14 to a point 25 feet North of the Southwest corner of said Lot 7, said point being on the North line of the Pacific Electric Railway Company's Right of Way; thence Easterly along the North line of the Pacific Electric Railway Company's Right of Way to the East line of Arrowhead Avenue; thence Southerly along the East line of Arrowhead Avenue to the North line of Second Street; thence Easterly along the North line of Second Street a distance of 300 feet; thence Southerly to a point on the South line of Second Street 300 feet East of the Northwest corner of Lot 5, Block 4 of the said City of San

Bernardino; thence Southwesterly to a point lying 50 feet South of the South line of Second Street and 184 feet East of the East line of Arrowhead Avenue; thence Southwesterly to a point on the East line of Arrowhead Avenue 225 feet South of the Northwest corner of said Lot 5; thence Southerly along the East line of Arrowhead Avenue to the North line of King Street; thence Easterly along the North line of King Street to the West line of Mountain View Avenue; thence Northerly along the West line of Mountain View Avenue to the North line of Second Street; thence Easterly along the North line of Second Street to the center line of Sierra Way; thence Southerly along the center line of Sierra Way to the North line of The Atchison, Topeka and Santa Fe Railway Company's Right of Way; thence Westerly alone the North line of said Right of Way to the West line of Mountain View Avenue (closed by City of San Bernardino, Resolution No. 1099); thence Northerly along the West line of said Mountain View Avenue to the South line of Rialto Avenue; thence Westerly along the South line of Rialto Avenue to the East line of Arrowhead Avenue; thence Southerly along the East line of Arrowhead Avenue to the Easterly prolongation of the South line of Athol Street; thence Westerly along the Easterly prolongation of the South line, the South line and the Westerly prlongation of The South line of Athol Street, to the point of beginning.

SECTION FOUR. The "Redevelopment Plan for Meadowbrook Project Area No. 1" approved and adopted by the Agency on May 20, 1958 is hereby found to provide for redevelopment of said area in conformity with the Com-

munity Redevelopment Law, to conform to the Master Plan of the City, to be economically sound and feasible; and it is further found that the carrying out of the Redevelopment Plan will be in the interest of and will promote the public peace, health, safety, and welfare of this Community and will effectuate the purposes and policy of the Community Redevelopment Law. That the Redevelopment Plan, a copy of which is on file in the office of the city clerk, is hereby incorporated in this ordinance by reference and made a part hereof; and as so incorporated is hereby approved and adopted as the Official Redevelopment Plan for Meadowbrook Project Area No. 1.

SECTION FIVE. The purposes and intent of this Council with respect to Meadowbrook Project Area No. 1, are to eliminate existing conditions of blight, obsolescence and substandard conditions, including among other things the following:

(a) Faulty subdivision design and exterior spacing of buildings,

(b) Lack of proper streets, paving and curving, improper street widths and circulation,

(c) Defective design and character of physical construction of buildings,

(d) Inadequate provisions for ventilation, light and sanitation in buildings, and open spaces,

(e) Age, obsolescence, deterioration, or dilapidation of structures,

(f) Unlawful construction, completion and use of structures for dwelling purposes without compliance with building ordinances, use of outbuildings for dwellings excessive, unlawful number of dwelling units on single lots; haphazard and unlawful mixed use of commercial and residential structures,

(g) Uneconomic feasibility of rehabilitation of majority of structures,

(h) Prevalence of depreciated values, impaired investments and economic maladjustments to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered.

This Council hereby finds and determines: that the Project Area is a blighted area within the meaning of Article 2 of Chapter 1 of the Community Redevelopment Law; that the above conditions which characterize the Project Area, and thereby constitute it a blighted area, are injurious to and inimical to the public health, safety and welfare of the people of the City of San Bernardino; that said conditions of blight, obsolescence and substandard conditions constitute social and economic liabilities, requiring redevelopment in the interest of the health, safety and general welfare of the people of the City of San Bernardino; that the benefits which will result from the remedying of such conditions of blight, obsolescence and substandard conditions will accrue to all the inhabitants and property owners of the City of San Bernardino; and that the correction of the aforementioned conditions by redevelopment in accordance with said Redevelopment Plan are in accord with the public uses and purposes of the Community Redevelopment Law.

SECTION SIX. It is hereby found and determined by this Council that the Redevelopment Plan herein approved for Meadowbrook Project Area No. 1 conforms to the Master Plan of this City. It is hereby further found and determined by this Council that the financial aid provided and to be provided pursuant to the contracts with the Housing and Home Finance Administrator hereinbefore referred to for financial assistance pertaining to the approved project is necessary to enable the land in the Pro-

ject Area to be redeveloped in accordance with the Redevelopment Plan for the Project Area. It is further found and determined that the Redevelopment Plan will afford maximum opportunity, consistent with the sound needs of this City as a whole, for the redevelopment of the Project Area by private enterprise. And it is further found and determined that additional financial assistance under the provisions of Title I of the Housing Act of 1949, as amended, is necessary to enable the land in the Project Area to be redeveloped in accordance with the Redevelopment Plan of the Project Area and, accordingly, the filing by the Agency of and application for such assistance under Title I of the Housing Act of 1949, as amended, is hereby aporoved.

SECTION SEVEN. All taxes levied upon taxable property in the Project Area each year by or for the benefit of the State of California, the City of San Bernardino, the County of San Bernardino, and every district or other public corporation after the effective date of this ordinance shall be divided as provided in Article 4 of Chapter 5 of the Community Redevelopment Law, and the excess taxes referred to in subdivision (2) of Section 33950 thereof shall be paid into a special fund as therein provided, to be expended to pay the principal of or interest on loans, moneys advanced to or indebtednesses incurred by the Agency to finance the redevelopment project herein approved; and the moneys in such special fund may be irrevocably pledged for such payment.

SECTION EIGHT. The city clerk shall send a copy of this ordinance to the Redevelopment Agency of the City of San Bernardino, and the Agency is thereafter vested with the responsibility for carrying out the official Redevelopment Plan approved herein.

SECTION NINE. The Redevelopment Agency of the City of San Bernardino shall have the power to enter into any type of contracts in connection with the Redevelopment Plan approved herein, without submitting such contracts to this Council and without obtaining this Council's approval.

SECTION TEN. If any part of this ordinance or of the plan which it approves is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or of the said plan, and the Council hereby declares that it would have passed the remainder of the ordinance, or approved the remainder of the plan if such invalid portion thereof had been deleted.

I HEREBY CERTIFY that the foregoing ordinance was duly adopted by the Mayor and Common Council of the City of San Bernardino at a ..... regular meeting thereof held on the 21st day of July, 1958, by the following vote, to wit:

AYES: Councilman Kir, Howard, Blair.

NOES: None.

ABSENT: Councilmen Jones, Short

JACK F. FELTON,
City Clerk.

I hereby approve the foregoing Ordinance this 22nd day of July, 1958.

W. P. HOWARD,
Mayor of the City of San Bernardino.
Pro Tempore.

Approved as to form:

WM. A. FLORY,
City Attorney.

APPENDIX "B."

COPIES OF OPINION AND JUDGMENTS BELOW.

Opinion First Related Case State Court of First Instance.

(Endorsed) Filed, 1958 May 15, PM 4 18, Harry L. Allison Co. Clerk, By Helen E. Brooks Deputy.

In the Superior Court of the State of California, in and for the County of San Bernardino.

Charlotte Andrews, Plaintiff, vs. City of San Bernardion, a Municipal Corporation, et al., No. 92497, Memorandum.

The plaintiff is seeking a Writ of Mandate to compel the Mayor and City Council of the City of San Bernardino to set aside a resolution declaring a need for a redevelopment agency in the City and activating such agency; and the plaintiff further prays that Ordinance 2217 of the City be set aside, which approves and adopts a tentative plan for the redevelopment of the Meadowbrook Project, Area No. 1.

In plaintiff's First Cause of Action, it is contended that since the electorate voted against the establishment of a redevelopment agency in the City of San Bernardino in a special election held in 1950 upon an "advisory proposition" submitted to them by the City Council, the Council cannot now act contrary to the import thereof without again referring it to the electorate by some appropriate proceeding.

This, however, is not the law. The legislative power of the City is vested in the City Council and the Council can neither divest itself of it nor delegate such power. The legislative power of the City may, however, be over-

ridden by initiative or referendum proceedings, but such proceedings may be instituted only upon petitions filed in accordance with provisions in the Charter. The election of 1950 was not called upon any such petitions and cannot, therefor, be considered either an initiative or a referendum proceeding. The proposition submitted to the people in 1950 was purely advisory. According to the established law in this State it could have no other effect. This was the intention of the City Council in calling such election for the election ordinance refers therein to the proposition as an "Advisory Proposition." In the case of Whitmore vs. Carr, 2 C. A. 2d 590, the Court declared that a similar vote of the electorate in the City of Oakland could have no legislative effect and was invalid and ineffective for any purpose.

Plaintiff's first contention, therefor, is without merit.

The plaintiff next contends that the adoption of the tentative plan by the City Council is a judicial act and, therefore, is one which the Courts will review upon petition for a Writ of Mandate. Plaintiff further contends that since the action of the City Council was not in accordance with the great weight of the evidence, the Writ should be granted.

The adoption of the tentative plan is not a judicial act but a legislative act. It is a decision of the Council which calls for judgment as legislators in which event the Courts will never interfere unless there be fraud or abuse of discretion.

The plaintiff contends that the adoption of the tentative plan must be considered a judicial act because the Health and Safety Code provides for a hearing and the taking of testimony. But this alone is not determinative.

These sections of the Health and Safety Code do not limit legislative discretion to only such decisions as can be justified by the evidence received at such hearings. The purpose of these sections is rather to assure to all parties a reasonable opportunity to be heard, to present testimony and to debate fully with the legislative body all aspects of the problem.

The plaintiff's second contention, therefor, must be denied.

Plaintiff's third contention is likewise based upon the theory that the adoption of the tentative plan is a judicial act and therefor subject to review. Having already.

* * * * * * * * *

Entered May 20, 1958, Book 143 Page 459, Harry L. Allison, Clerk, By Florence A. Coleman.

(Endorsed) Filed 1958 May 20 PM 3 24 Harry L. Allison Co. Clerk, by Helen E. Brooks Deputy.

In the Superior Court of the State of California in and for the County of San Bernardino.

Charlotte Andrews, Plaintiff, vs. City of San Bernardino, a Municipal Corporation, et al., Defendants. No. 92497, Judgment.

In this proceeding the defendants CITY OF SAN BERNARDINO, its Mayor, Common Council and City Clerk, by their attorneys William A. Flory and Waldo Willhoft, having appeared and demurred to plaintiff's Petition herein, and the defendants THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO, its Members and Officers, by their attorney William J. Ward, having also appeared and demurred to plaintiff's Petition herein, and the issue of law thereto arising having been duly submitted to the Court by said defendants, and the Court being fully advised in the premises did heretofore, to-wit, on the 16th day of May, 1958, by Order, sustain said demurrers to the first, second and third causes of action in plaintiff's Petition herein, and refused leave to plaintiff to amend her Petition, and dissolved the alternative writ of mandate heretofore issued herein.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff take nothing by this proceeding and her Petition herein, and that this proceeding be, and the same is hereby, dismissed.

DATED this 20 day of May, 1958.

JESSE W. CURTIS, JR.
Judge of the Superior Court.

Opinion Second Related Case Court of First Instance.

In the Superior Court of the State of California, in and for the County of San Bernardino.

Charlotte Andrews, Petitioner, vs. City of San Bernardino, etc., et al., Respondents. No. 94346, Memorandum Opinion.

This controversy concerning the so-called Meadowbrook Project once more comes before the Court upon an amendment to the Petition for Judicial Review in which petitioner seeks a Writ of Mandate compelling the Mayor and Common Council of the City of San Bernardino to either repeal Ordinance No. 2233 or submit it to the voters of the City for approval or rejection. The Ordinance in question gives final approval to the redevelopment plan for the Meadowbrook Project Area No. 1 as required by Section 33742 of the Health and Safety Code. Both sides agree that the issue which is now presented to this Court for decision is whether or not this Ordinance is subject to referendum.

After a careful review of Ordinance No. 2233 and the sections of the Health and Safety Code which create and provide for redevelopment agencies and housing authorities in California and a consideration of the authorities cited, I have come to two conclusions:

(1) The Housing Authorities and Community Redevelopment Laws are so similar in language and purpose that court decisions as to the applicability of referendum powers to resolutions or ordinances adopted pursuant to the Housing Authorities Law are most persuasive and are binding upon the Court in the instant case. (See: *Housing Authority of the City of Eureka vs. Superior Court*, 35 C. 2d 550; *Kleiber vs. City and County of San Francisco*, 18 C. 2d 718; *Lockhart vs. City of Bakersfield*, 123 C.A. 2d 728.)

(2) In adopting this ordinance, the Common Council was acting in an administrative capacity for the purpose of carrying out the declared legislative policy of the State of California as set forth in Health and Safety Code, Section 33047.

Based upon these conclusions, the Court finds that the action of the Common Council in adopting Ordinance No. 2233 was administrative, not legislative, and therefore this Ordinance is not subject to referendum.

The Ordinance with which we are concerned merely makes a number of factual findings which are required in the approval of the redevelopment project. The Community Redevelopment Law enumerates the various procedural steps required to set up a community redevelopment project, and this Ordinance is the last of such steps. In the Court's opinion, the only legislative authority entrusted to the Common Council by the Community Redevelopment Law was the right to pass a resolution declaring a need for a redevelopment agency in San Bernardino.

With reference to petitioner's contention that the decision of Judge Curtis in case No. 92497 was res adjudicata, I have reviewed the file in that case and have discussed his decision with Judge Curtis. It is our opinion that the finding which I make is in no wise inconsistent with Judge Curtis's ruling because the precise question was not before the Court in the previous action.

Petitioner's application for a Writ of Mandate is denied, and respondents' demurrers are sustained without leave to amend as to the Second Cause of Action of the petition herein.

Dated: November 24, 1958.

/s/ Edward P. Fogg

EDWARD P. FOGG, *Judge.*

Opinion Courts of Intermediate Appeals Fourth Civil 5983 on First Related Case.

Opinion of the District Court of Appeal, Fourth Appellate District, State of California; Filed November 19, 1959, E. J. Verdeckberg, Clerk. 4th Civil No. 5983.

Charlotte Andrews, Plaintiff and Appellant, vs. The City of San Bernardino, a municipal corporation, the Redevelopment Agency of the City of San Bernardino, et al, Defendants and Respondents.

Appeal from a judgment of the Superior Court of San Bernardino County, Jesse W. Curtis, Jr., Judge. Affirmed.

Alexander Ruiz and Manuel Ruiz, Jr., for Appellant.

William A. Flory and Waldo Willhoft for Respondent City of San Bernardino.

William J. Ward for Respondent The Redevelopment Agency of the City of San Bernardino.

This is an action by which appellant seeks a writ of mandamus to compel the mayor and Common Council of the City of San Bernardino (hereinafter referred to as Council) to set aside Resolution No. 2361 adopted June 23, 1952, declaring a need for a redevelopment agency and also seeking to compel said Council to set aside and vacate Ordinance No. 2217 which approved the tentative plan for redevelopment of Meadowbrook Project Area No. 1, which ordinance was adopted March 31, 1958. The petition for mandamus was filed April 15, 1958. A demurrer was sustained without leave to amend and plaintiff appeals from the judgment entered pursuant to such order.

The petition shows that the city of San Bernardino is governed under a charter adopted pursuant to Sections 8

and 8½ of Article XI of the California Constitution. Under such charter the governing body is the Council. On November 7, 1950, the Council, by Ordinance No. 1896, caused to be submitted to a vote of the electors of the City the following question:

> "Shall the Mayor and Common Council of the City of San Bernardino create and establish a redevelopment agency pursuant to the provisions of the California Community Redevelopment Act?"

The majority vote on this question was "No." On January 19, 1951, the Council directed the mayor to write a letter cancelling the contract for urban redevelopment. About a year and a half later, on June 23, 1952, the Council for Resolution 2361 declared a need for a redevelopment agency in the city. In 1954 the City Planning Commission took steps to designate redevelopment areas and adopted a plan therefor. In 1957 the Council designated the redevelopment area under discussion. After duly noticed hearings on January 30, 1958, the redevelopment agency adopted a tentative plan and submitted the same to the Council for approval. The Planning Commission recommended to the Council the approval of the tentative plan. Notice was given, as provided by law, of a public hearing before the Council on the tentative plan and on March 4, 1958, such hearing was held. Plaintiff appeared before the Council at that time and at her request the matter was continued until March 24th, when the first reading of the ordinance was had. It then went over to March 31st for the second reading and on that day plaintiff's request for additional continuances was denied, and after hearing arguments and evidence the Council enacted Ordinance No. 2217 approving and adopting a tentative plan for redevelopment of Meadowbrook Project Area No. 1.

Plaintiff contends that the Council did not afford adequate time to prepare for a hearing and that her rights were thus unlawfully prejudiced. From the preceding recital it appears that the consideration of the redevelopment project had been before the community in general for more than four years and that mailed notice was given to each assessed landowner about January 1st, 1958, as notice of the hearing of January 30, 1958, before the redevelopment agency (petitioner alleges that she and the other persons she claims to represent are landowners in the project area here in question); that even though she might claim that she did not personally receive such notice nor read the publication thereof, she did in fact appear at the hearing of March 4, 1958, and obtained a continuance of three weeks which, coupled with a further continuance of one week for the second reading of the ordinance, made a total of four weeks. We are satisfied that her petition makes fully clear that ample time and opportunity for hearing was afforded petitioner by Council and that on this showing no court would be justified in holding that Council abused its discretion.

Next, plaintiff contends that the election of November 7, 1950, was a valid initiatory process and that the election caused the approval of an ordinance which only the electorate could change. With this we cannot agree. All that was submitted to the voters was an advisory question. Its form admits of no other interpretation. It is true that Section 120(b) of Article III of the charter of the City of San Bernardino, insofar as it is here cogent to the issues, reads:

> ". . . and any Ordinance proposed by petition or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people obtained in like manner."

The form of the question proposed to the electorate was not on the subject of the adoption of an ordinance but rather was on the question how did the elector think on a certain general proposal. The proceeding clearly had no resemblance to an initiatory process for no elector's proposal had ever been made. The referendum is limited in its operation to legislation already enacted by the legislative body and it is clear from a mere glance at the question that it bears no resemblance to a legislative enactment. (*Whitmore v. Carr*, 2 Cal. App. 2d 590, 593[2]; *Housing Authority v. Superior Court*, 35 Cal. 2d 550, 558 [8].) The case of *Dye v. Council of The City of Compton*, 80 Cal. App. 486, cited by plaintiff involved a tax ordinance regularly adopted by the Council with a referendary petition presented to and denied by the Council. This and other cases cited by plaintiff do not bear on the subject at hand and are not persuasive.

Second, plaintiff claims this action was timely, that is, that it was not premature. In considering this question it must be kept in mind that there are several chronological steps which must necessarily precede the adoption of a "final redevelopment plan." Included in these preparatory steps are (with section numbers of the Health and Safety Code involved) first, the Council's resolution of need, 33201; second, appointment of five-member board of redevelopment agency, 33230; third, Planning Commission's plan, 33452; fourth, resolution of Council designating redevelopment areas, 33481; fifth, formulation of preliminary plan, 33502; sixth, the tentative plan and public hearings thereon, 33530 to 33535; seventh, presentation of tentative plan to Council and public hearings thereon, 33560 to 33567; eighth, adoption by Council of tentative plan, 33568 to 33573; ninth, preparation of fi-

nal plan, 33700 to 33741; adoptiou of final plan, 33733. It is with this background in mind that we must examine sections 33730 and 33746 as they are amended by the legislature of 1957. Section 33730 provides for a public hearing on the final redevelopment plan after notice given by publication for not less than once a week for four successive weeks in a newspaper of general circulation. Since the complaint shows that the tentative plan was not adopted until March 31st, 1958, and since this action was filed on April 15, 1958, it at once affirmatively appears therefrom that no *final* redevelopment plan could have been adopted prior to the fiiing of this action. Section 33746, after providing for a complete stay of all proceedings for thirty days after the adoption of the final redevelopment plan goes on to provide further:

> "The findings and determinations of an agency and of a legislative body or of either of them, in the adoption and approval of any redevelopment plan or of any urban renewal plan or of any combination of such plans may be judicially reviewed by a court of competent jurisdiction. Such action must be brought within 90 days after the date of adoption of the ordinance approving the plan. No action shall be brought prior to the adoption of the final redevelopment plan. (As amended Stats. 1957, c. 1696, p. 3069, sec. 5)."

From the foregoing it is crystal clear that the plaintiff's action was commenced in direct contravention of the legislative provision since it was commenced before any final redevelopment plan ordinance had been or could have been adopted. From a review of the entire subject of redevelopment, as covered by the Health and Safety Code, it is clear that the legislative intent was to prevent piecemeal litigation. Such action by the legislature was, in our opin-

ion, not only reasonable but highly sensible, for piecemeal litigation could very easily forestall the accomplishment of the legislative purpose for indefinite periods of time. Since the paragraph quoted provides specifically for a review of the findings and determinations of both the agency and the legislative body, we think adequate protection is afforded insofar as courts might be able to give such protection.

Plaintiff makes no complaint nor point of the failure of the trial court to permit amendment, and from that we assume she admits she could not advantageously do so. Furthermore, on the face of the complaint itself, reciting as it does the essential steps taken by Council, it does not appear that any amendment could afford plaintiff any assistance.

In view of the foregoing we find it unnecessary and of no advantage to discuss other points raised by defendants.

The judgment appealed from is affirmed.

SHEPARD, *J.*

WE CONCUR:

GRIFFIN, *P. J.*

MUSSELL, *J.*

Opinion Court of Intermediate Appeals Fourth Civil 6243 on Second Related Case.

Opinion of the District Court of Appeal, Fourth Appellate District, State of California; Filed November 19, 1959, E. J. Verdeckberg, Clerk. 4th Civil No. 6243.

Charlotte Andrews, Plaintiff and Appellant, vs. City of San Bernardino, a municipal corporation, The Redevelopment Agency of the City of San Bernardino, et al., Defendants and Respondents.

Appeal from a judgment and orders of the Superior Court of San Bernardino County, Edward P. Fogg, Judge. Affirmed.

Alexander Ruiz and Manuel Ruiz, Jr. for Appellant.

Ralph H. Prince, City Attorney, and Waldo Willhoft for Respondent City of San Bernardino.

William J. Ward for Respondent The Redevelopment Agency of the City of San Bernardino.

This is an action wherein petitioner seeks in the first count of her petition a judicial review of the proceedings of the Mayor and Common Council of the City of San Bernardino (hereinafter called Council), and of the proceedings of the Redevelopment Agency of the City of San Bernardino (hereinafter called Agency), as is provided for by Health and Safety Code Section 33746. In a second count, petitioner seeks a writ of mandate to compel a referendum to the voters of the City of San Bernardino of an alleged legislative act of Council by which it approved a final Redevelopment Plan for Meadowbrook Project No. 1. Petitioner also seeks a preliminary injunction to restrain Council and Agency from any other proceedings until final determination of this proceeding. The trial court held the allegations of the first count to be

sufficient to state a cause for the judicial review requested. It sustained without leave to amend the demurrers to the second portion of the petition, wherein petitioner seeks mandamus to compel referendary action. The motion for a preliminary injunction was denied. Plaintiff appeals from the judgment of dismissal of the second count (pertaining to mandamus) and from the order denying a preliminary injunction.

The proceedings of the Council and Agency hereinbefore referred to were foundational for the ultimate crystallization into action of a redevelopment project for the City of San Bernardino, identified as Meadowbrook Project No. 1. The chronology of the various steps which led up to the adoption of Ordinance No. 2217 (the tentative redevelopment plan), which was the foundational predecessor of Ordinance No. 2233 (the final plan and the ordinance here under attack) will be found in *Andrews v. City of San Bernardino,* 4 Civil No. 5983, ... A. C. A. ....., 1959, filed this day by this court.

In the action here at bar a petition was circulated demanding a referendum vote pursuant to Section 121 of the charter of the City of San Bernardino to determine whether or not the electorate of San Bernardino would approve the passage of said Ordinance No. 2233. It is conceded that the petition contained the required number of lawful signatures and that the Council refused referendary action. Petitioner then sued for a writ of mandate to compel Council to either repeal said Ordinance 2233 or to submit the same to the electorate of the city for approval or rejection in accordance with said Section 121.

Council takes the position that the action involved in Ordinance No. 2233 is not legislative in character but

is merely an exercise of the executive and administrative powers of Council, and is therefore not subject to referendary proceedings. With this position we are compelled to agree.

Long before the proceedings subject of this dispute arose, our Supreme Court had unequivocally established the rule that under a state law of the type here involved the Council acts in an administrative and not in a legislative capacity, and that a referendum will therefore not lie. "The power of referendum applies only to acts that are legislative in character; executive or administrative acts are not within the scope of that remedy." (*Housing Authority v. Superior Court*, 35 Cal. 2d 550, 557 [5].) As a consequence, a determination that Ordinance No. 2233 constituted an administrative action on the part of Council would prevent the issuance of a writ of mandamus to compel a referendum of said ordinance. A careful comparison of the Community Redevelopment Law and of the Housing Authority Law, both of which are contained within Division 24 of the Health and Safety Code, convinces us that there is no substantial difference in the general structure and plan of operation insofar as it affects the question of exercise of legislative power which is here presented.

> "Section 4 of the Housing Authorities Law provides that there is created in each city . . . of the state a public body corporate and politic to be known as the 'housing authority'; but that such authority shall not function until or unless the governing body of the city . . . by proper resolution shall declare that there is need for the authority to function." (*Kleiber v. City etc. of San Francisco*, 18 Cal. 2d 718, 720.)

Since the power of such a Housing Authority is such as the legislature may delegate (*Kleiber v. City etc. of San Francisco, supra*, 725 [3], we can find no valid reason why the comparable acts in the Community Redevelopment Law could not be equally delegated. As is true under the Housing Authority Law, all considerations of wisdom, policy and desirability connected with the functioning of a redevelopment plan became settled and have been resolved adversely to the position of petitioner herein by the action of the state and of Council in the original declaration of the existence of the need. Upon the formation of the Redevelopment Agency the state law thereupon and thereafter controlled the city and Redevelopment Agency, and all other acts fell within the executive or administrative functions. "Neither is functioning independently of that state law. In pursuing the state objective each is governed by the state law and neither may exercise powers not vested or recognized by that law." (*Housing Authority v. City of L. A.*, 38 Cal. 2d 853, 862.) As a consequence, when operating pursuant to the Community Redevelopment Law, the same rules apply as with respect to the Housing Authority Law wherein it has been held that the city and Housing Authorities function as administrative arms of the state because they pursue a state concern and effectuate a state legislative objective. (*Housing Authority v. City of Los Angeles*, 38 Cal. 2d 853, 862.) The standard is:

> "When the sole basis for a determination is whether a certain 'contingent effect' exists to warrant local application of state legislation, the exercise of that narrow authority is an administrative act and not a legislative one." (*Housing Authority v. Superior Court*, 35 Cal. 2d 550, 558 [7].)

We see no valid distinction between the resolution of the Council (whether it be called Ordinance or some other name) pursuant to the Community Redevelopment Plan and the Housing Authority Law in respect to whether there is a right to referendum. (*Housing Authority v. Superior Court*, p. 559 [9-10]; *Lockhart v. City of Bakersfield*, 123 Cal. App. 2d 728.)

The two California cases upon which petitioner most strongly relies are *Burdick v. City of San Diego*, 29 Cal. App. 2d 565 and *Collins v. City and County of San Francisco*, 112 Cal. App. 2d 719. The Burdick case merely follows the time-honored rule established many years ago by our Supreme Court that the designation of the location of the seat of government or of important governmental functions within a city is a legislative matter subject to referendary control. That case makes clear that once the legislative policy is established (as pointed out in the Housing Authority cases) the administrative acts following therefrom are not subject to referendum. The Collins case simply upheld the validity of referendary submission to the voters of San Francisco of a salary standardization ordinance by which the city's long time policy respecting adjustment of salaries was sought to be established. In the case at bar, the establishment of policy had already been completed by the California Legislature by the adoption of the Community Redevelopment Law and by the declaration of need adopted by Council in 1952. Ordinance 2233 merely makes the factual findings required for final approval of a redevelopment project under the Community Redevelopment Act, which enumerates the procedural steps necessary to set up a community redevelopment project. Here, as in the Housing Authority case, in adopting Ordinance No. 2233 the Council was merely acting in an administrative capacity

for the purpose of effectuating the stated legislative policy theretofore adopted. This is not true in either the Burdick or the Collins case.

With respect to the issuance of a preliminary injunction the trial court had the duty of weighing with great care the question of which party was most likely to be severely injured by the granting or denial of the preliminary injunction. As is said in *McCoy v. Matich,* 128 Cal. App. 2d 50, 52:

> " 'It is a rule so universally followed and so often stated as to need only to be referred to that the granting, denying, dissolving, or refusing to dissolve a preliminary or temporary injunction rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case.' It is further the rule that 'The discretion, however should be exercised in favor of the party most likely to be injured.' "

The many and varying problems of potential damage to the city and the state in obstructing a project of this kind, and of the possible damage to taxpayers in failing to obstruct it, are matters that lie within the sound discretion of the court, and in reviewing them we are unable to say that the trial court abused its discretion in refusing to grant the preliminary injunction.

Petitioner has made no point of amending her petition and we are unable to discover how she could adequately amend it in the respect in which demurrers were sustained.

The judgment and orders appealed from are affirmed.

SHEPARD, *J.*

WE CONCUR:

GRIFFIN, *P. J.*

MUSSELL, *J.*

Order of Supreme Court of the State of California.

In the Supreme Court of the State of California.

Charlotte Andrews, Plaintiff and Appellant, vs. the City of San Bernardino, et al., Defendants and Respondents. 4th Civil No. 5983.

Charlotte Andrews, Plaintiff and Appellant vs. the City of San Bernardino, et al., Defendants and Respondents. 4th Civil No. 6243.

MINUTE ORDER

January 13, 1960.

APPELLANT'S PETITIONS FOR HEARING DENIED.

SCHAUER, J., IS OF THE OPINION THAT THE PETITIONS SHOULD BE GRANTED.

GIBSON, *C. J.*

LE COPY

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1959

No. [redacted]

CHARLOTTE ANDREWS,

Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, et al.,

Defendants and Appellees.

CHARLOTTE ANDREWS,

Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, et al.,

Defendants and Appellees.

Appeal to the Supreme Court of the United States
From the District Court of Appeal, Fourth Appellate
District, State of California

APPELLEES' MOTION TO DISMISS OR AFFIRM

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SUBJECT INDEX

Page

I. Appeal Should be Dismissed for Failure of Appellant to comply with the Rules of this Court 3

II. Statement of Facts 6

III. Federal Questions Sought to be Reviewed are not Timely or Properly Raised, or Expressly Passed Upon by the California Courts 12

IV. No Substantial Federal Questions are Presented by Appellant, and Appellant was Accorded Due Process of Law and an Opportunity to be Heard 15

V. Judgments of State Courts Rest on an Adequate Non-Federal Basis 22

VI. Conclusion 24

APPENDICES:

1. Excerpts from San Bernardino City Charter 27

2. Excerpts from Health & Safety Code (California Community Redevelopment Law) 32

TABLE OF AUTHORITIES CITED

Cases

Page

Andrews v. City of San Bernardino, 175 A.C.A. 481, 346 P. 2d 454 and 175 A.C.A. 499, 346 P. 2d 457 ..... 1, 2

Berman v. Parker, 348 U.S. 26, 76 Sup. Ct. 98, 99 L. Ed. 27 15

Black v. Cutter Lab., 351 U.S. 292, 76 S. Ct. 824, 100 L. Ed. 1188 15

Ellis v. Dixon, 349 U.S. 458, 75 S. Ct. 850, 99 L. Ed. 1231 24

Fellom v. Redevelopment Agency of San Francisco, 157 Cal. App. 2d 243, 320 P. 2d 884, denied 358 U.S. 56, 79 Sup. Court 111, 3 L. Ed. 47 ..... 15, 16

Herb v. Pitcairn, 324 U.S. 117, 65 S. Ct. 459, 89 L. Ed. 789 15

Hopping v. City of Richmond, 170 Cal. 605 20

Housing Authority v. Superior Court, 35 Cal. 2d 550 ..... 17, 20

Kleiber v. City of San Francisco, 18 Cal. 2d 718 20

Lockhart v. City of Bakersfield, 123 Cal. App. 2d 728 20

McKevitt v. City of Sacramento, 55 Cal. App. 117 20

TABLE OF AUTHORITIES CITED (continued)

Page

Norwegian Nitro-Production Co., v. United States, 288 U.S. 294, 53 Sup. Court 350, 77 L. Ed. 796 25

Schneider v. District of Columbia, 117 Fed. Supp. 705 ..... 13, 14

Simpson v. Hite, 36 Cal. 2d 125 20

Stembridge v. Georgia, 343 U.S. 541, 72 S. Ct. 834, 96 L. Ed. 1130 24

Tidal Oil Co. v. Flanagan, 263 U.S. 444, 44 S. Ct. 197, 68 L. Ed. 382 22

Van Hoff v. Redevelopment Agency of San Francisco, 348 U.S. 897, 99 L. Ed. 705 16

Walker v. City of Hutchinson, 352 U.S. 113 18

Wilson v. City of Long Branch, 27 N.J. 360, 142 A. 2d 837, cert. den. 358 U.S. 873 25

Whitmore v. Karr, 2 Cal. App. 2d 590 17

Young v. Ragen, 337 U.S. 235, 69 S. Ct. 1073, 93 L. Ed. 1333 24

Zucht v. King, 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194 22

Codes

Page

California Code of Civil Procedure Section 1245 19

California Health and Safety Code (California Community Redevelopment Law):
Sections 33000 et seq. 7
Section 33562-33565, incl. 23
Section 33563 17
Section 33733 10
Section 33746 ..... 20, 21, 24
28 U.S.C.A. 1257 (2) and (3) 2
28 U.S.C.A. 2103 2

City Ordinances

No. 1896 8
No. 2217 ..... 9, 13, 17
No. 2233 ..... 10, 19, 20, 23

Rules

Rules of the Supreme Court of the United States:
Rule 10, 2, (c) 3
Rule 15, 1, (c) (2) 5
Rule 15, 1, (d) 6
Rule 15, 1, (e) 6
Rule 16, 1, (a) 2
Rule 16, 1, (b) 2
Rule 16, 1, (c) 2

Texts

39 Cal. Jur. 2d 138 14

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1959

No. 997

CHARLOTTE ANDREWS,

Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, et al.,

Defendants and Appellees.

CHARLOTTE ANDREWS,

Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, et al.,

Defendants and Appellees.

Appeal to the Supreme Court of the United States From the District Court of Appeal, Fourth Appellate District, State of California

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APPELLEES' MOTION TO DISMISS OR AFFIRM

Appellees move that this appeal be dismissed or, in the alternative, that the judgments appealed from *Andrews v. City of San Bernardino*, (175 A.C.A. 481,

346 P. 2d 454; and 175 A.C.A. 499, 346 P. 2d, 457) be affirmed on the following grounds:

1. The appeal is not within the jurisdiction of this Court because it has not been taken in conformity to the Rules of this Court. (Rule 16, 1(a).)

2. The Appeal does not present any substantial Federal question. (Rule 16, 1. (b) (c).)

3. The Federal questions, sought to be reviewed, although not substantial, were not timely or properly raised, nor expressly passed on by the State Court. (Rule 16, 1. (b).)

4. The judgments of the State Court rest on an adequate non-Federal basis. (Rule 16, 1. (b).)

Appellant, in her Notice of Appeal, page 1, and also in her Jurisdictional Statement, page 2 states that this Appeal is taken pursuant to 28 U.S.C.A. 1257 (2) and (3). The second of these two sections covers a review of a State Court decision by Writ of Certiorari. From the contents of the Notice of Appeal and the contents of the Jurisdictional Statement filed by Appellant, it appears that her proper remedy is to apply for a Writ of Certiorari. In view of the fact that under 28 U.S.C.A. 2103, the Court is entitled to consider an Appeal as an application for a Writ of Certiorari and that the misapprehension of the Appellant as to her proper remedy is not a ground for dismissal, Appellees request that this Motion to Dismiss or Affirm, be also treated as a brief in answer to an application for Writ of Certiorari, in the event the Court considers Appellant's Appeal as a petition for Writ of Certiorari.

I.

APPEAL SHOULD BE DISMISSED FOR FAILURE OF APPELLANT TO COMPLY WITH RULES OF THIS COURT

Since consideration of whether Appellant has conformed to the Rules of this Court in presenting her Notice of Appeal and Jurisdictional Statement, does not require consideration on the merits of the points raised in the Appeal, Appellees will present this part of the motion preliminary to their discussion of the merits of the Appeal and the other bases on which the Motion to Dismiss or Affirm is predicated.

Attention is directed to the fact that the Notice of Appeal is *42 pages* long. Rule 10, 2. (c) requires that the Notice of Appeal

> "Shall set forth the questions presented by the Appeal, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise, should not be repetitious, and should not resemble in form or particularity the former assignments of error which are abolished by paragraph 1 of this Rule . . . . . a failure to comply with these requirements will be a sufficient reason for dismissing the Appeal."

A casual reading of the Notice of Appeal will indicate that it does not conform to this Rule. It contains a mass of unessential, redundant and argumentative material not permissible under the Rules. It contains almost a complete recital of all of the allegations in the suits from which an appeal has been taken. It cites authorities, references to transcripts, quotations from

Court decisions and statutes, all of which are more properly presentable elsewhere in an appeal.

An essential of a Notice of Appeal is that the questions presented be expressed with such explicitness that the issues on the Appeal are clearly set out. In this respect the Notice of Appeal fails to comply with the Rules. On page 6 of the Notice of Appeal in Paragraph VII, an attempt is made to state the "Federal questions" involved. They appear to be set forth in what are stated to be six "inter-related" steps. Assuming that this arrangement is meant to indicate that there are six Federal questions involved, a reading of these "inter-related" steps fails to reveal how or in what manner the recital of alleged grievances gives rise to "Federal questions" subject to review.

The "First Inter-Related Step" set forth on Page 7 of the Notice of Appeal merely states that a Municipal Corporation "abridged said electors privileges as United States Citizens" but does not state how or in what manner, or by what act this occurred.

The "Second Inter-Related Step" set forth on Page 8 merely states that a Municipal Corporation deprived property owners of the right to present evidence contrary to procedural due process, but again how or in what manner, or by what act or conduct this was brought about so that a Federal question arose, is not indicated.

The "Third Inter-Related Step" on Page 8 simply states that a certain Notice of Hearing "was inadequate" and deprived petitioner of the opportunity contrary to due process to defend against a Redevelopment Plan. No indication is given as to how the Notice was inadequate or whether or not it complied with the

Redevelopment law in question (which in fact it did, as will hereinafter be set out).

The "Fourth Inter-Related Step" simply recites that there was a referendary petition and the conclusion that the Municipal Corporation ignored it. No indication of a Federal question is made.

The "Fifth Inter-Related Step" set forth on Page 9 alleges "illegal and discriminatory conduct" denying petitioner "the equal protection of the laws and due process", but again there is no indication what acts or conduct are involved which would lead to a Federal question.

The "Sixth Inter-Related Step" on Page 9 simply states the conclusion that a Municipal Corporation "withheld procedural action which would have given petitioner access to Courts" thereby depriving her of "equal protection of the laws and taking of her property without due process of law". Here again no indication is made what kind of procedural action is referred to, or how and in what manner the act of the Municipal Corporation gave rise to a federal question.

The *Jurisdictional Statement* does not conform to Rule 15 in various particulars. According to Rule 15, 1. (c) (2) it "may not raise additional questions or change the substance of the questions already presented". The Jurisdictional Statement on file herein on Page 4, paragraph 6, sets forth an entirely new "question" which is not contained in the Notice of Appeal. Moreover the question indicated as "Fifth Inter-Related Step" on Page 9 of the Notice of Appeal is *not* contained in the questions presented in the Jurisdictional Statement.

The Jurisdictional Statement fails to comply with Rule 15, 1. (d) in that it does not indicate the manner in which the alleged "Federal questions" were raised, nor the method of raising them, nor the way they were passed upon by the Court, nor does it contain "such pertinent quotations of specific portions of the record" as will support the assertion that the rulings of the Court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this Court. Appellant attempts to conform to this Rule requirement on Pages 10 and 11 of her Jurisdictional Statement. An examination thereof will indicate a failure to comply with this Rule without Appellee particularizing its lack of compliance.

The Jurisdictional Statement fails to comply with Rule 15, 1. (e) in failing to set forth why the Federal questions allegedly presented "are so substantial as to require plenary consideration . . .". Starting with Page 12 of the Jurisdictional Statement and continuing to the end of the document under the heading "The Questions Are Substantial" the Appellant merely argues her entire cause, the recital including argumentative material, evidentiary matter, and subject matter entirely unrelated to the raising of a Federal question, none of which is helpful in determining whether the Federal questions were "substantial" as to require plenary consideration.

It is respectfully submitted that the Appeal should be dismissed for want of compliance with the Rules of the United States Supreme Court.

II.

STATEMENT OF FACTS

For a clarification of the issues presented by the Ap-

peal, it appears very important at the outset that the factual background which has given rise to this controversy be set forth.

The City of San Bernardino is a Municipal Corporation in Southern California, governed by State and Federal Law, and State and Federal Constitutions, *and also a Charter*, which under applicable State Law, has been approved by the State Legislature. Since at least 1950, there has been local interest in the *redevelopment* of certain areas within the City in accordance with the State Community Redevelopment Law as set forth in the California *Health and Safety Code, Sections 33000 et seq.* The Act provides for financing of projects by Federal Government Agencies.

The *legislative power* of the City is vested in a Mayor and Common Council, exercised by the enactment of ordinances, resolutions and orders, adopted in the manner set forth in the City Charter. The City Charter also provides for the exercise of *initiative* and *referendum* powers by its voters. (See City Charter Provisions in the Appendix).

In November 1950, the *then* Mayor and Common Council, as an *advisory proposition*, asked for an expression of opinion of its citizens on the following question:

> SHALL THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO CREATE AND ESTABLISH A REDEVELOPMENT AGENCY PURSUANT TO THE PROVISIONS OF THE CALIFORNIA COMMUNITY REDEVELOPMENT ACT?

This did not constitute an exercise of the *initiative*

rights of the citizens since no initiative petition had ever been submitted in support of it. It obviously was not an exercise of *referendum* powers since it had never before been an ordinance or law of the City. The proposition itself was not an *ordinance*, as Appellant erroneously calls it in her Appeal. There had been no *ordinance* adopted by the City Council to implement the proposition if it had at that time been approved by the electors. There was an ordinance *calling the election* (No. 1896), but this ordinance was only a procedural step in order to bring the proposition to a vote (Appellant confuses this *ordinance calling an election*, as somehow making the proposition voted upon as constituting an *ordinance*).

This proposition received a negative vote in November 1950. Thereupon the Mayor and Common Council of San Bernardino *abandoned* any effort to establish a Redevelopment Agency, in accordance with the wishes of the electors at that time.

Subsequently, in June 1952, a *different* Mayor and Common Council under the legislative powers vested in them by the City Charter, adopted a resolution activating a Redevelopment Agency for said City under the State Community Redevelopment Law. At that time the City was governed not only by a Mayor who was not in office in 1950, but also by a Council of which three of the five members had been elected in 1952, and who were *not* on the Council in 1950. This resolution was therefore enacted by a legislative body comprised of members a majority of whom had *not* participated in the presentation of the proposition to the voters in 1950.

Thereafter the City Council appointed the members of the Redevelopment Agency, adopted resolutions

designating "blighted areas" requiring redevelopment, and carried out the various steps required by the State Community Redevelopment Law, until March 31, 1958, when, pursuant to notice complying with the State Community Redevelopment Law, by *ordinance* it adopted and approved a *tentative* plan of redevelopment of a certain area in the City (Ordinance No. 2217).

After the adoption of this ordinance approving the tentative plan Appellant brought her *first action*, which is one of those the subject of this Appeal, claiming that the proposition submitted to the voters in 1950, was an *ordinance* or *law* and that it forever stayed the hands of any Mayor and Common Council of the City from forming a Redevelopment Agency, except by subsequent approval of the electorate. In this action Appellant also complained that although she had obtained Notice of the Hearing before the City Council and had in fact appeared at the hearing, that she was entitled to additional time to present evidence, in spite of the fact that the City Council *did* accede to her demands and grant her one continuance, *not* provided for in the Community Redevelopment Law. Appellee demurred to the three causes of action set up by Appellant, which demurrer was sustained without leave to amend, and which decision was affirmed by the Fourth District Court of Appeal of California, rehearing denied, and hearing denied by the California Supreme Court.

The *second action* brought by Appellant, also the subject of this Appeal, arose out of subsequent events with respect to the Redevelopment project of the City. After the adoption of the tentative plan by Ordinance of the City Council in March 1958, the tentative plan was given further consideration by the City

and Redevelopment Agency authorities and in July 1958, after a *hearing* held in conformity with the State Community Redevelopment Law, the *final* plan was adopted by Ordinance No. 2233, approved July 21, 1958. The contents of this ordinance are dictated by Section 33733 of the State Community Redevelopment Law. Although denominated an ordinance it is not of the kind which sets forth law or rules of conduct—instead it contains simply a recital of the *findings* of the City Council, a description of the property, and procedural provisions.

After the adoption of this ordinance petitions were circulated in the City of San Bernardino by Appellant and others, and necessary signatures obtained requesting the City Council either to rescind this ordinance, or under the *referendum* provisions of the City Charter call an election thereon and submit the ordinance to the vote of the electors. On the advice of its City Attorney the City Council held that this was only a procedural ordinance and under applicable State Court decisions was *not* the kind of an ordinance subject to referendum powers.

On the announcement of this decision, and refusal of the Council to call such an election Appellant filed her *second suit*, contending that this ordinance was subject to *referendum*. A demurrer to her Writ of Mandate was sustained in the Superior Court. Her Appeal to the Fourth District Court of Appeal sustained the lower Court's decision and her request for hearing by the California Supreme Court was denied. From this determination Appellant has appealed to this Court.

Although this Statement of Facts is rather lengthy,

it has appeared necessary, in view of the confusion of issues as set forth in Appellant's Notice of Appeal and Jurisdictional Statement.

It will appear from the foregoing recital that *State Law*, and not *Federal Law*, nor Federal Constitutional provisions, loom up as affording complete determination of Appellant's contentions, and that the existence of "Federal questions" of a "substantial" nature are not likely to be found to exist. Appellees will now bring this question into focus hereinafter.

(CAUTIONARY NOTE: The Court's attention is directed to the Petition of Appellant in her *second* action, set forth in the Clerk's Transcript in Case No. 94346 (Appellate Court, 4th Civil No. 6243). That part of the Petition set forth on pages 1 to 18 of the Clerk's Transcript is a *repetition* of the allegations contained in the Petition which is the subject of the *first* Appeal. The only part of this *second* Petition which is before this Court on appeal is that part on pages 34-36 of the Clerk's Transcript setting forth the issue pertaining to the *referendum* petition. The part set forth on pages 18-34 of the Clerk's Transcript, having to do with the *hearing* on the final redevelopment plan, is STILL AT ISSUE BEFORE THE SAN BERNARDINO COUNTY SUPERIOR COURT, AND THAT ISSUE *HAS NOT YET BEEN TRIED*. That part of the petition should therefore not be considered on this Appeal. It raises the issue as to the conduct of the hearing before the Council on the *final* redevelopment plan, and remains to be determined by the California Courts, including the trial Court. The separation of the issue respecting the disposal of the *referendum* petition was agreed upon by Counsel in view of the fact that it presented a question of *law* only, whereas the issue respecting the conduct of the hearing on the final

plan would require a trial, introduction of evidence, and examination of witnesses as well as application of law thereto.)

III.

FEDERAL QUESTIONS SOUGHT TO BE REVIEWED ARE NOT TIMELY OR PROPERLY RAISED, OR EXPRESSLY PASSED UPON BY THE CALIFORNIA COURTS

On Page 10 and 11 of the Jurisdictional Statement Appellant attempts to show where and in what manner Federal questions relied upon were raised in the prior proceedings. No attempt is made to show "the way in which they were passed upon by the Court" as required by the Rules. Appellant sets out *three* provisions which she claims raised one or more Federal questions:

(1) "Before the State Municipal Corporation during its adjudicatory hearings". Reference is made to portions of a Reporter's Transcript. Such Reporter's Transcript is not one of the exhibits brought before this Court (See Pages 2 and 3 of Notice of Appeal) nor was such Transcript *brought before any of the California Courts*, as the issues appealed from were disposed of on hearing on *demurrer* to Appellant's petitions, and quite obviously a Reporter's Transcript was not a part of either of such petitions.

(2) Appellant next states that the Federal questions were raised in Paragraphs III and XIII of the petition for Writ of Mandate in Case No. 92497, and as incorporated by reference in successive causes of action in said petition (Clk. Tr. pages 3 and 8). It is true that in said Paragraph III, Appellant alleges

"that the Defendants, *as hereinafter set forth*, are at the present time exercising an unlawful and illegal authority, power and jurisdiction over the property of the above-named Plaintiff, as well as the property of other persons similarly situated, by *unauthorized proceedings, order and decisions*, and unless prevented by appropriate action of this Court, Plaintiff will be illegally, unlawfully and arbitrarily deprived of her property, without due process of law, in violation of the Constitution of the United States, and of the Constitution of the State of California. . . ." In Paragraph XIII the only allegation is that the Defendants "without lawful authority and illegally" did enact Ordinance No. 2217 and "subject to Redevelopment proceedings and exercise unlawful and illegal authority and jurisdiction over the property of Plaintiff and others similarly situated, for which there is no adequate remedy at law unless restrained by this Court. . . ." No other reference to raising any Federal question appears in this petition. Although Appellant, apparently by these allegations, sought to raise a Federal question, *the other allegations in her petition do not show any reliance whatever on the violation of any constitutional rights or guarantees.*

Moreover the *trial* Court in its judgment in Case No. 92497 passed on *no Federal question* (See Appendix (B) pages 23-25 of Jurisdictional Statement).

Furthermore on the *Appeal* of the trial Court's decision in this action *Appellant's opening brief does not raise any issue of a Federal question*, cites 21 California Appellate Court decisions in support of her contentions, and makes only one three line quotation from any Federal decision to the effect "it behooves the Courts to be alert lest currently attractive projects infringe on fundamental rights. (Schneider v. District

of Columbia, 117 Fed. Supp. 705.) Appellees' *reply brief* cited no Federal cases as no Federal question was presented. The decision of the Fourth District Court of Appeals does not pass upon any Federal question or cite any Federal decisions for the same reason — that *no Federal or Constitutional question was raised on Appeal.* (See First Appellate decision, page 29 of Appendix to Jurisdictional Statement.) The Appellate Court cited only California Appellate and Supreme Court decisions, as these were determinative of the questions presented on the Appeal. ALL OF WHICH WERE NON-FEDERAL IN NATURE.

(3) In the *second action* brought by Appellant, (Case No. 94346) she claims that a Federal question was raised by the *prayer* of her petition, which in general terms asked the State Court to "make its order directing said Common Council to permit petitioner to produce and present material evidence, in accordance with proper procedural rules, in compliance with due process of law." It is a rule of long standing that the *prayer* of any petition or complaint, unsupported by any previous allegations, is no part of the statement of a cause of action. The subject matter of an action and the issues involved are determinable from the *facts alleged* and not from the prayer. (See 39 Cal. Jur. 2d 138) In this *second* action the lower Court in rendering its decision cited no *Federal* cases nor passed on any *Federal* question. On the Appeal in this action the Appellant in her opening brief *raised no Federal question* nor did she cite a single Federal decision or opinion, but did cite 8 California decisions and the decisions of the Courts of three other states. The Appellate Court, in rendering its decision affirming the decision of the lower Court, likewise passed on no Federal question, nor cited any Federal case or opinion, *since no Federal question was raised in this second Appeal.*

It therefore appears that the Appeal should be dismissed for failure of Appellant to properly raise the alleged Federal questions in the California Courts so that such Federal questions would be directly passed upon by those tribunals, thereby giving to this Court the benefit of the presentation, authorities cited, and rulings of the Court directly on such Federal questions, if any Federal questions of a substantial nature in fact exist. (*Black v. Cutter Laboratories*, 351 U.S. 292, 76 Sup. Ct. 824, 100 L. Ed. 1188 (annotated); *Herb v. Pitcairn*, 324 U.S. 117, 65 Sup. Ct. 459, 89 L. Ed. 789.)

IV.

NO SUBSTANTIAL FEDERAL QUESTIONS ARE PRESENTED BY APPELLANT, AND APPELLANT WAS ACCORDED DUE PROCESS OF LAW AND AN OPPORTUNITY TO BE HEARD

In Appellant's Jurisdictional Statement are set forth six "grounds", as constituting substantial Federal questions entitling Appellant to be heard in this Court. Appellees contend that *none* of these six grounds set forth a single *substantial* Federal question and they will be discussed in the order in which they appear in the Jurisdictional Statement:

(Preliminarily Appellees point out that the Appellant *does not attack* the *constitutionality* of the California Community Redevelopment Law *nor any* of its provisions; in fact Appellant accepts its constitutionality and cites some of the cases which heretofore have established such constitutionality. (See Page 29 Appellant's Reply Brief in Appellate Case, Fourth Civil No. 5983, citing *Berman v. Parker*, 348 U.S. 26, 76 Sup. Court 98, 99 L. ed. 27; *Fellom v. Redevelop-*

ment Agency of San Francisco, 157 Cal. App. 2d 243, 320 P. 2d 884, review denied 358 U.S. 56, 79 Sup. Court 111, 3 L. Ed. 2d. 47; *Van Hoff v. Redevelopment Agency of San Francisco*, 348 U.S. 897, 99 L. Ed. 705)

In her *First Ground* Appellant appears to contend that since the electors of San Bernardino in 1950, cast a negative vote on an advisory proposition submitted to them by the City Council to the effect that the Council should not at that time create a Redevelopment Agency, that the action of a *different* Council in 1952 creating such a Redevelopment Agency, constituted some abridgment or denial of the electors, the exact nature of which is not stated by Appellant, and that thereby the provisions of the 14th Amendment have been infringed.

The effect of the negative vote on the proposition submitted to electorate in 1950, is clearly set out in the decision of the State Appellate Court. The Court simply held that *under the law of the State of California*, the proposition in question did not constitute a law or ordinance but was only an advisory proposal. It said

> "All that was submitted to the voters was an *advisory* question. Its form admits of no other interpretation. The Court clearly held that the proposition could not be considered an initiatory measure because the electorate did not initiate it. Nor could it be considered a referendum measure since no ordinance or law preceded it which could be referred to the electorate."

Decisions of other California Appellate Courts are cited in the opinion, clearly supporting the decision of

the Appellate Court. (*Whitmore v. Karr*, 2 Cal. App. 2d 590; *Housing Authority v. Superior Court*, 35 Cal. 2d 550) *No Federal question* was raised in connection with this issue by the Appellant, nor passed on by the California Appellate Court since it was not raised, and it was unnecessary to the decision as an adequate non-Federal basis existed. In addition Appellees point out that said proposition was addressed to a Mayor and City Council *who were no longer in office in 1952*, when a resolution creating a Redevelopment Agency was, for the first time, passed and approved by a different City Council.

In her *Second Ground* (Page 17, Jurisdictional Statement) Appellant appears to state that the Federal question raised was that Appellant and others were denied the right to be heard, to an extent of their own choosing, in a hearing before the City Council held in conjunction with the ordinance approving the tentative plan, being Ordinance No. 2217.

The California Redevelopment Law, in *Health and Safety Code, Section 33563*, specifies that the notice of the hearing "shall be published not less than once a week for three successive weeks prior to the date of hearing . . . . . in a newspaper of general circulation, printed and published in the community."

This notice of hearing was given precisely as required by law. The hearing was held before the City Council as set forth in the notice, namely on March 4, 1958. APPELLANT APPEARED AT SAID HEARING AND PARTICIPATED THEREIN. At said hearing (as Appellant admits on Page 18 of the Jurisdictional Statement) Appellant requested *additional* time to present her material. Although the California Community Redevelopment Law is silent on the sub-

ject, nevertheless THE CITY COUNCIL GRANTED SUCH CONTINUANCE. When the *adjourned* hearing was held on March 25, 1958, Appellant was again present and instead of offering evidence or data, asked for a *second* continuance claiming she had not had sufficient time to prepare that she had engaged an expert, but that the expert needed more time. No indication was given whether the findings of the expert would be favorable or unfavorable to her cause. Appellant now claims, that since this additional continuance was not granted, that the refusal was done "arbitrarily and illegally" and that "due process" has not been accorded to her. (On Pages 22-26 of the Jurisdictional Statement Appellant quotes from the record of a hearing on July 1, 1958. All of this material is *entirely irrelevant* to the pending proceeding, as the hearing Appellant complains of is the one held on *March* 4 and *March* 25, 1958, pertaining to the tentative plan.)

It would appear that the three weeks' published notice of hearing and Appellant's *actual participation* at the hearings on March 4 and March 25, 1958, and her failure to indicate how any further continued hearings could be helpful to her cause, amply demonstrate that she has been given an opportunity to be heard and that she has been accorded "due process".

As her *Third Ground* Appellant again complains of a lack of notice and opportunity to defend at the hearing before the City Council on March 4 and March 25, 1958. The case of *Walker v. City of Hutchinson, 352 U.S. 113*, is cited as authority for the proposition that one publication in a newspaper is not sufficient notice on an action to condemn property. This case is entirely irrelevant at this time. *Appellant's property is not now being condemned.* Should the Redevelopment project of the City proceed to the point where property is actually

acquired, the law of the State of California requires that notice of any such action be *personally served* on the Appellant. (California Code of Civil Procedure, Section 1245) No separate Federal question is presented in Appellant's Third Ground.

In her *Fourth Ground* (Page 31 of Jurisdictional Statement) Appellant claims that a Federal question arises in view of the refusal of the City Council to submit Ordinance No. 2233 to the electorate after referendum petitions had been lodged with the City Council, claiming that thereby they have "refused to comply with the plain import of the City Charter of said Municipal Corporation, which this Supreme Court may independently examine....."

The City Council in rejecting the right to a referendum vote, did so on the advice of its City Attorney, who in turn was guided by an examination of the law of the State of California with reference to the right of initiative and referendum. That he correctly advised the City Council is supported by the fact that (1) the trial Court, (2) the Fourth District Court of Appeal, and the (3) State Supreme Court, all sustained his position. *No Federal question* is here involved. The *right of referendum* and its *scope*, is determinable by the referendum provisions in the City Charter (See Appendix), and the decisions of the State of California with reference thereto. The three Courts to which Appellant submitted this issue, had before them said Ordinance No. 2233. *All three Courts* decided that under the law of the State of California and the provisions of the San Bernardino City Charter, the ordinance in question was not one to which the right of referendum applied, on the grounds that this particular ordinance by its content constituted only an *executive* or *administrative* act and *did not constitute*

legislation. A cursory examination of said ordinance will support this view. It contains nothing but a recital of the *findings* of the City Council, a description of the property, and procedural detail. (See Ordinance, p. 6 et seq, Appendix, Juris. Statement) *It contained no law* or *regulations* which would place it in the category of an ordinance on which the electors could exercise their franchise in determining whether such law or regulation should be enacted. *The California cases in support of this view are legion: Housing Authority v. Superior Court, 35 Cal. 2d 550; Kleiber v. City of San Francisco, 18 Cal. 2d 718; McKevitt v. City of Sacramento, 55 Cal. App. 117; Hopping v. City of Richmond, 170 Cal. 605; Lockhart v. City of Bakersfield, 123 Cal. App. 2d 728; Simpson v. Hite, 36 Cal. 2d 125.*

In her *Fifth Ground* Appellant fails to state any Federal Question. She appears to differ with the California Courts in their decision that the act of the City Council in adopting the tentative plan was *legislative*, whereas their act in adopting Ordinance No. 2233 was *administrative*, and she claims that the name-calling of these courts has led to confusion and that she is entitled to have these matters *reclassified* by the Supreme Court. No Federal question is indicated.

In her *Sixth Ground* (Page 38 of Jurisdictional Statement) Appellant only by remote inference suggests the existence of a Federal question. She complains of being deprived of a judicial review of the ordinance approving the *tentative plan* because of the statutory bar of Section 33746 of the California *Health and Safety Code* against *premature* actions. She states that since the City did not adopt the *final plan* by ordinance until more than sixty days after adopting the tentative plan, and since Section 33746

forbids any action until after the adoption of the *final plan*, that thereby she has been deprived of the right to review the ordinance adopting the *tentative plan*.

Section 33746 of the *Health and Safety Code* reads as follows:

> "The findings and determination of an agency and of a legislative body or of either of them, in the adoption and approval of any redevelopment plan may be *judicially reviewed* by a Court of competent jurisdiction. Such action must be brought within *sixty* days after the date of adoption of the ordinance approving the plan. No action shall be brought prior to the adoption of the *final* redevelopment plan."

The answer to Appellant's contention is twofold: (1) Nothing is accomplished by a separate review of the ordinance adopting the *tentative plan since* it is what its name implies, only *tentative*, and may be *entirely changed* at the time of the adoption of the *final plan;* (2) Section 33746 does not limit the judicial review to the adoption of the final plan. Note the language of Section 33746 that "the findings and determinations . . . . . of a legislative body . . . . . in the adoption and approval of *any* redevelopment plan may be judicially reviewed. . . ."

Appellant fails to point out that there is *now pending* her *Petition for Judicial Review* in the San Bernardino County Superior Court, San Bernardino, California, Case No. 94346 and that upon the conclusion of this Appeal said pending Petition for Judicial Review *will be set for trial*, and that at that time Appellant will be accorded a judicial review in accordance with her Petition. It therefore appears that under the

Sixth Ground Appellant's contentions are moot, in addition to the fact that no Federal question is indicated.

That a substantial Federal question must be raised by Appellant to entitle her to a review, see *Zucht v. King*, 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194, and *Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 44 S. Ct. 197, 68 L. Ed. 382: "This Court has always held it a prerequisite to the consideration here of a Federal question in a case coming from a State court that the question should have been raised in that court before decision, or that it should have been actually entertained and considered upon petition to rehear."

V.

JUDGMENTS OF STATE COURTS REST ON AN ADEQUATE NON-FEDERAL BASIS

In the *first* Appeal from the decision of the Fourth District Court of Appeal of California, in Case No. 5983, the Appellate Court *passed on no Federal question*, and its interpretation of the proposition submitted to the voters in 1950, as being only an *advisory* proposition and *not an ordinance* was amply supported by California Appellate Court decisions hereinbefore set forth, and therefore it appears that that question was disposed of on an *adequate non-Federal basis*.

The *second* contention raised by Appellant in this first action was that she did not have time to prepare for the hearing on the tentative plan and that although she did have notice and that the notice complied with the State law, and although she was granted at her own request a continuance of the hearing for three weeks, that nevertheless she was entitled to an *addi-*

tional continuance. The Court disposed of this issue by stating

> "We are satisfied that her Petition makes fully clear that ample time and opportunity for hearing was afforded petitioner by the Council and that on this showing no Court would be justified in holding that the Council abused its discretion".

In this regard, again, *an adequate non-Federal basis exists* in view of the fact that the Notice of Hearing given and the conduct of the Hearing was all in accordance with the California Community Redevelopment Law (Sections 33562-33565 inc. *Health and Safety Code*), and said act provides for no continuance of the hearing although a continuance was actually granted at least *once* by the City Council. Note also that Appellant at no time has challenged the sufficiency and constitutionality of the notice and hearing provisions of the California Community Redevelopment Law, nor any part of the law, nor the law itself.

In her *second Appeal* in Case No. 6243 of the Fourth District Court of Appeal, the only issue presented was whether or not Appellant was entitled to a *referendum* vote on the referendum petitions submitted respecting Ordinance No. 2233. The Appellate Court, like the lower Court, analyzed the ordinance and determined on the basis of abundant California Appellate Court decisions elsewhere cited herein, that said ordinance was not of the kind or character to which the power of referendum applied. It therefore appears that there is an *adequate non-Federal basis* for this decision.

In the first Appeal the Appellate Court applied still another *non-Federal* basis for disposing of the Appeal, namely that the action was *prematurely brought* under

Section 33746 of the *Health and Safety Code*. Says the Court "from the foregoing it is crystal that the Plaintiff's action was commenced in *direct contravention* of the legislative provisions, since it was commenced before any final redevelopment plan ordinance had been or could have been adopted".

The Supreme Court is without jurisdiction to review a judgment of a State court which rests on one or more adequate non-Federal grounds. (*Ellis v. Dixon*, 349 U.S. 458, 75 S. Ct. 850, 99 L. Ed. 1231; *Stembridge v. Georgia*, 343 U.S. 541, 72 S. Ct. 834, 96 L. Ed. 1130; *Young v. Ragen*, 337 U.S. 235, 69 S. Ct. 1073, 93 L. Ed. 1333.)

VI.

CONCLUSION

Essentially Appellant's contentions only hint at the existence of any Federal questions, or violation of any constitutional rights or guarantees to which Appellant is entitled as a United States citizen. Appellant throughout her *Jurisdictional Statement* complains of the fact that steps are being taken which will eventually lead to the loss of her property. The necessity of taking private property for public uses is essential to the exercise of governmental functions. Under the *California Community Redevelopment Law* Appellant's property *cannot* be taken except by *eminent domain* proceedings in which she will be accorded due notice and an opportunity to appear and protect her rights. *This state of the proceedings has not yet arrived.*

In complaining of the methods of the City Council in holding hearings, Appellant implies that such hearings

should be conducted like *judicial* hearings, by the formal presentation of evidence, cross-examination of witnesses, etc. *Legislative hearings* such as are held before the City Council are different from *judicial hearings* where the regular rules of evidence and method of examining witnesses apply. As stated by the Court in the case of *Wilson v. City of Long Branch, 27 N.J. 360, 142 A. 2d 837 (Certiorari denied 358 U.S. 873)*:

> A distinction must be recognized between a *legislative* investigation and *hearing* and a *judicial hearing*. No adjudication of property rights is called for here, nor is there any taking of property involved. There is simply preliminary investigation and report by a subordinate agency of government. These are typical of the legislative process. As has been shown above, investigations or study of the desirability of acquiring private property for public use, as well as the decision to take, are preliminary matters which have always been regarded as legislative in character, and not subject to the hearing requirements of due process. If this were not so government could not function effectively. We must assume that the legislature in adopting the act knew the state of the law and the difference between a legislative and a judicial hearing." (This case was one involving the Community Redevelopment Law of the State of New Jersey.) See also *Norwegian Nitro-Production Co. v. United States, 288 U.S. 294, 53 Sup. Court 350, 77 L. Ed. 796.*

It is therefore respectfully submitted that the Appeal should be dismissed: (a) for want of compliance with the Rules of this Court; (b) for want of raising any substantial Federal question; (c) for failure to

raise any Federal question timely or in a proper manner; and (d) because the decisions appealed from rest on an adequate non-Federal basis.

WHEREFORE, Appellees pray that the Appeal be dismissed, or, in the alternative, that the judgments be affirmed; and if the Court should treat the Appeal as an application for Writ of Certiorari, that the application be denied.

DATED: San Bernardino, California,

June 30, 1960.

Respectfully submitted,

WALDO WILLHOFT,

208 Blackstone Building,
San Bernardino, California,

Attorney for Defendants and Appellees

WILLIAM J. WARD,

Attorney for the Redevelopment Agency
of the City of San Bernardino,
Blackstone Building,
San Bernardino, California,
Of Counsel

(Appendix Follows)

APPENDIX

PERTINENT PROVISIONS OF THE CHARTER OF THE CITY OF SAN BERNARDINO, CALIFORNIA

LEGISLATIVE DEPARTMENT

The Common Council

Section 30. The legislative power of the City is hereby vested in the Common Council consisting of five members, three of whom shall constitute a quorum, but a less number may adjourn from time to time, or compel the attendance of other members. No order, except to adjourn for a lack of a quorum, or to compel the attendance of a quorum, and no Ordinance, or Resolution shall be valid unless it receives the affirmative vote of three councilmen.

ORDINANCES AND RESOLUTIONS

Section 31. Ordinances and Resolutions are the formal acts of the Council reduced to writing and passed under legal restrictions governing action thereon; orders embrace all other acts which being less formal in character require only to be duly passed by the Common Council and spread upon the minutes. No Order, Resolution, or Ordinance shall have effect without the approval of the Mayor, except when four members of the Common Council concur in its adoption. In case of orders, the approval of the Mayor shall be presumed unless at the same meeting at which the order is passed, the Mayor causes his disapproval, with his reasons therefor, to be spread upon the minutes. All Resolutions and Ordinances after passage must be

submitted to the Mayor who shall, within five days after he has received the same, endorse his approval, or disapproval thereon, giving the reason for his disapproval. No Ordinance or Resolution shall be placed upon its final passage in the Common Council upon the same day that it has been introduced and read in full the first time, nor until five days thereafter; and every Ordinance or Resolution to be valid must be passed by a vote of not less than three councilmen and approved by the Mayor, provided that if the Mayor fails to approve the same it may be passed by a vote of not less than four councilmen, and shall take effect as if approved by the Mayor.

Section 32. The enacting clause of all Ordinances shall be: "The Mayor and Common Council of the City of San Bernardino do ordain as follows."

Section 33. All Ordinances, before taking effect, shall be published at least for three consecutive days, exclusive of holidays, in some daily newspaper printed and published in the City of San Bernardino.

INITIATIVE AND REFERENDUM

Section 120. Any proposed Ordinance may be submitted to the Common Council by a petition signed by qualified and registered electors of the City equal in number to the percentage hereinafter required. The signatures of the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and such other identification as may be required by the registration law. One of the signers of each such papers shall make oath before an officer qualified to administer oaths, that the statements therein made are true, and that each signature to the paper appended is the genuine

signature of the person whose name purports to be there-unto subscribed. Within ten days from the date of filing such petition, the City Clerk shall examine and from the great register ascertain whether, or not, said petition is signed by the requisite number of qualified electors and if necessary, the Council shall allow him extra help for that purpose, and he shall attach to said petition his certificate showing the results of said examination. If, by the Clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The Clerk, shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be found to be sufficient the Clerk shall submit the same to the Council without delay.

If the petition accompanying the proposed Ordinance be signed by electors equal in number to thirty per cent of the entire vote cast for all candidates for Mayor at the last preceding City election at which a Mayor was elected, and contains a request that said Ordinance be submitted forthwith to a vote of the people at a special, or general municipal election, then the Council shall either:

(a) Pass such Ordinance without alteration within twenty days after the attachment of the Clerk's certificate of sufficiency to the accompanying petition (subject to the referendary vote), and if the Ordinance shall be passed by the Council, but shall be vetoed by the Mayor, and on re-consideration shall fail of passage by the Council, then, within five days after determination that said Ordinance shall have so failed

of final adoption, the Council shall proceed to call a special election at which said Ordinance, without alteration, shall be submitted to a vote of the people; or

(b) Forthwith after the Clerk shall attach to the petition accompanying such Ordinance his certificate of sufficiency, the Council shall proceed to call a special election at which said Ordinance, without alteration, shall be submitted to a vote of the people.

The ballots used when voting upon said proposed Ordinance, shall contain the words "For the Ordinance," (stating the general nature of the proposed Ordinance) and "Against the Ordinance," (stating the general nature of the proposed Ordinance). If a majority of the qualified electors voting on said proposed Ordinance shall vote in favor thereof, such Ordinance shall thereupon become a valid and binding Ordinance of the City; and any Ordinance proposed by petition, or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people obtained in like manner.

Any number of proposed Ordinances may be voted upon at the same election, in accordance with the provisions of this section; provided that there shall not be held under this section of the Charter more than one special election in any period of twelve months.

THE REFERENDUM

Section 121. No Ordinance passed by the Common Council (except when otherwise required by the general laws of the state, or by the provisions of this Charter, respecting street improvements and except an Ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of

its urgency, and is passed by a two-thirds vote of the Council, but no grant of any franchise shall be construed to be an urgency matter, but all franchises shall be subject to the referendary vote herein provided) shall go into effect before thirty days from the time of its final passage and its approval by the Mayor; and if during said thirty days a petition signed by electors of the City equal in number to at least thirty per cent of the entire vote cast for all candidates for Mayor at the last preceding city election at which a mayor was elected, protesting against the passage of such Ordinance, be presented to the Council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the Council to reconsider such Ordinance, and if the same is not entirely repealed, the Council shall submit the Ordinance proposed to the vote of the electors of the city either at the next general municipal election or at a special municipal election to be called for that purpose, and such Ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same, shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of the first section of this article (The Initiative) and shall be examined and certified by the Clerk in all respects as therein provided.

PERTINENT SECTIONS OF CALIFORNIA COMMUNITY REDEVELOPMENT LAW (HEALTH AND SAFETY CODE SECTION 33000 et seq.)

SECTION 33562. Public Hearing. Before passing upon the tentative plan, the legislative body shall set a time and fix a place for a public hearing on its adoption.

SECTION 33563. Publication of notice of hearing. Notice of the hearing shall be published not less than once a week for three successive weeks prior to the date of hearing. The notice shall be by publication in a newspaper of general circulation, printed and published in the community, or if there is none, a newspaper selected by the legislative body.

SECTION 33564. Contents of notice. The notice of hearing shall include a legal description of the boundaries of the area or areas designated in the tentative plan and a general statement of the scope and objectives of the plan.

SECTION 33565. Hearing. At the hearing the legislative body shall:

(a) Consider the report of the agency and the recommendation and report of the planning commission.

(b) Provide an opportunity for all interested persons or agencies to be heard and receive and consider written communications with reference to the tentative plan.

(c) Take other evidence and testimony presented concerning the matters under consideration.

SECTION 33568. Action of legislative body; modification, approval, or rejection of plan. After the hearing the legislative body shall:

(a) Determine whether the redevelopment of the project area pursuant to this part is in the public interest and tends to effectuate the purposes and policy of this part.

(b) Approve or reject the tentative plan or any alternative plan, or modify either and approve or reject it as modified.

SECTION 33571. Contents of ordinance approving plan. The ordinance shall include:

(a) A legal description of the boundaries of the project area.

(b) A statement of findings, based upon surveys, investigations, and reports of public agencies, and any other information, showing the extent and character of blight, obsolescense, and substandard conditions in the area and their injurious and detrimental effects upon the public health, safety, and general welfare.

(c) The tentative plan for the redevelopment of the project area, showing the principal features of the master plan or general community plan as they apply to the project area.

SECTION 33733. Ordinance adopting plan. If the legislative body determines that the redevelopment plan conforms to the master or general plan of the community, that it is economically sound and feasible, and that the carrying out of the plan would promote the

public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this part, by ordinance adopted by a majority vote of all the members it may adopt the plan as the official redevelopment plan for the project area

SECTION 33742. Approval of plan by ordinance; contents of ordinance. The approval of a redevelopment plan by a legislative body shall be by ordinance. The ordinance shall:

(a) Contain a legal description of the boundaries of the project area covered by the redevelopment plan.

(b) Set forth the purposes and intent of the legislative body with respect to the project area.

(c) Refer specifically to the determinations required in other sections of this article.

(d) Contain by reference to maps, reports, and other information the full details of the approved plan.

(e) Designate the approved plan as the official redevelopment plan of the project area.

SECTION 33746. Judicial review of findings and determinations; limitations. The findings and determinations of an agency and of a legislative body or of either of them, in the adoption and approval of any redevelopment plan may be judicially reviewed by a court of competent jurisdiction. Such action must be brought within 60 days after the date of adoption of the ordinance approving the plan. No action shall be brought prior to the adoption of the final redevelopment plan.

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Office Supreme Court, U.S.
FILED
JUL 14 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1959

No. [redacted]137

CHARLOTTE ANDREWS,
Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, *et al.*,
Defendants and Appellees.

CHARLOTTE ANDREWS,
Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, *et al.*,
Defendants and Appellees.

Appeal to the Supreme Court of the United States
From the California State Appellate Courts.

APPELLANT'S REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

MANUEL RUIZ, JR.
704 South Spring Street
Los Angeles 14, California
Attorney for Appellant.

ALEXANDER RUIZ,
Of Counsel.

SUBJECT INDEX

Page

I

Appellant has complied with the rules of Court 1

Exhibit "A" 2

II

Reply to statement of facts 3

III

Federal questions were properly raised 4

IV

Substantial Federal questions were presented 5

V

Judgment of State Courts rests on adequate Federal basis 5

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Appeal to the Supreme Court of the United States
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APPELLANT'S REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

I

APPELLANT HAS COMPLIED WITH THE RULES OF COURT

The first eleven pages of the Notice of Appeal set forth the statements of the questions in a short and concise manner, without repetition. The questions presented are expressed in the terms and circumstances of the case and without unnecessary detail, and the Justices need only read pages 1 through 11 of the 42 pages of Notice of Appeal.

The printers, included after page eleven, material that was being prepared for the subsequent jurisdictional statement, inadvertently, inasmuch as Counsel at the time was in Mexico, and said additional inclusion as printed was mailed to the Clerk of the Su-

preme Court, instead of State Court, by said printers, without the opportunity to submit the same to Counsel. As the jurisdictional time to notice the appeal was to lapse on the same day (See attached letter from Clerk of Supreme Court, Exhibit "A" herein), it became necessary to file the same immediately, i.e. on the 90th and last day, April 12, 1960, as already printed, without opportunity of deleting the material which had already been inserted after page 11 of the Notice of Appeal.

EXHIBIT "A"

Office of the Clerk,
Supreme Court of the United States,
Washington 25, D. C.

April 18, 1960

Manuel Ruiz, Jr., Esquire
704 South Spring Street
Los Angeles 14, California

RE: ANDREWS v. CITY OF SAN BERNARDINO ET AL.

Dear Sir:

This will acknowledge receipt of your letter of April 11th, requesting that certain enumerated changes be made in your "Notice of Appeal to the Supreme Court of the United States."

Since the Notice of Appeal has previously been returned to you, the copies of your letter of April 11th are returned herewith.

Very truly yours,
JAMES R. BROWNING, Clerk
By: R. J. Blanchard, Deputy

RJB:jmh
Enclosures

Under said circumstances of inadvertence, in the interests of justice, appellant ought not be denied a hearing on the merits.

A reading of the first eleven pages of the Notice of Appeal will show why appellees have not claimed that they were in any manner prejudiced or misled. The Court will agree, that the statements of the questions as therein submitted are short and concise, and are not repetitious and without unnecessary detail. Said first eleven pages comply with all of the procedural requirements of the Notice of Appeal, without need of referring to the pages thereafter included, which latterly included material now forms part of the Jurisdictional Statement, on file.

Appellant denies appellees' assertion, that additional questions which change the substance of the six original grounds for appeal, have been inserted in the Jurisdictional Statement, and to the contrary calls attention of the Court that the six inter-related steps asserted in the Notice of Appeal as violating appellant's constitutional rights, are the same six grounds for appeal which are contained and explicitly set forth in the Jurisdictional Statement, re-arranged only as to number and reworded in the form of questions for more clarity.

II

REPLY TO STATEMENT OF FACTS

The statement of facts set forth by appellees in Paragraph II of the Motion to Dismiss, are matters which go to the merits of the appeal, and properly to be determined, upon the issues which are raised and substantiated by the Jurisdictional Statement.

Appellees' attempt to beg the question by asserting that the matter is still "at issue before the San Bernardino County Superior Court," is untrue, as specifically contradicted by appellant at pages 8 to 10, inclusive, of the Jurisdictional Statement, wherein it is set forth that the State Court decisions have made the trial and review of appellant one of form only, and without substance, inasmuch as the issues have been finally adjudicated. Even so, appellees do not directly contradict the contentions of appellant other than to merely state that a portion of the record should not be considered by this Court.

Appellees' contention that matters of a "free election" are matters solely of State concern and State law, is contrary to the legal authorities submitted by appellant wherein the United States Constitution has been invoked in protection of the State privilege of voting.

III

FEDERAL QUESTIONS WERE PROPERLY RAISED

Pages 10 and 11 of the Notice of Appeal, and pages 10 and 11 of the Jurisdictional Statement, detail the manner in which the Federal questions were properly raised below. The assertion by appellees that the State courts failed to consider or pass upon the Federal questions, should offer little solace, since all that State courts would have to do would be to fail to consider or pass upon matters raised of Federal import, and ignore the same, and no right to appeal to the Supreme Court would exist.

IV

SUBSTANTIAL FEDERAL QUESTIONS WERE PRESENTED

In arguing the merits of the issues, appellees in substance relate that a strict compliance with the California State Law is a complete defense to the action presented. Appellees likewise contend that token adherance to a State statute is all that is required, without reference to whether the same be unconstitutionally enforced. Under color of valid State law, appellees adopt the philosophy that State instrumentalities may avoid good faith hearings, analysis and study in adjudicatory proceedings, ignore principles of good faith in free elections, and circumvent the guarantees of the Federal Constitution, which require a hearing and free election in fact, and not merely in form.

V

JUDGMENT OF STATE COURTS RESTS ON ADEQUATE FEDERAL BASIS

Appellees devote two pages of argument without making reference to any of the authorities cited by appellant at pages 12 to 40 of the Jurisdictional Statement, in support of the claim that the judgments of the State courts rest on adequate non-federal basis. The arguments made by appellees in this regard are without merit.

The quotation on page 23 of Appellees' Motion to Dismiss or Affirm, from the opinion of the District Court of Appeals, as follows:

> "We are satisfied that her Petition makes fully clear that ample time and opportunity for hear-

ing was afforded petitioner by the Council and that on this showing no Court would be justified in holding that the Council abused its Discretion."

The quotation is illustrative of the congenital defect of the proceedings disputed at bar. It must be considered at all times that the determinations of the Court below were a result of appellees' demurrer, which admits the truth of allegations well pleaded.

In District Court of Appeals, 4th Civ. No. 92497, Clerk's Trans., page 13, it is alleged in appellant's pleading that after the first continuance was granted by the Common Council, appellant's expert searched for and sought to marshal facts required by law, such as surveys, investigations, reports of public agencies, and which were either non-existent or not available during said three weeks continuance, and that it became necessary for said expert to conduct original research and three weeks were insufficient in view of the magnitude of the task, despite the fact that appellant submitted a preliminary report on the merits, by a qualified expert which showed work performed and the necessity of further research for proper preparation. (4th Civ. numbered 92497, Cl. Trans., pages 18 through 20) wherein reference is made to exhibits 9 and 10 commencing on sub-page 34 through 44. Nevertheless, on March 24th. 1958, appellee Common Council arbitrarily denied a further continuance and proceeded to adopt the plan.

Under Code (California Health & Safety Code, Section 33570), it was provided, with regard to the tentative plan, that all records and certified copies in relation thereto shall be given a name and number and filed with the City Clerk (4th Civ. numbered

94346, Cl. Trans., pg. 23). On the date of the approval of the Tentative Plan, no exhibits were filed with the City Clerk (4th numbered 94346, Cl. Trans., pg. 30). The City Clerk could not produce said documents relating thereto, because he had not received the exhibits. (4th Civ. numbered 94346, Cl. Trans., pg. 31).

The plain import of lack of due process became evident at the hearing upon the final plan July 1st, 1858, wherein it is alleged in District Court of Appeal numbered 4th Civ. 94346 (Appellant's Petition for Judicial Review), Cl. Trans., pages 16 and 17, that the findings of the Common Council were based upon the following:

1. General information of the Common Council heard over a period of many months.

2. Personal knowledge of Councilmen as long-time residents of San Bernardino.

3. Confidential information not filed with the City Clerk (4th Civ. numbered 94346, Cl. Trans., page 19).

4. That the completed record submitted by appellees weighed 54 lbs. (4th Civ. numbered 94346, Cl. Trans., pg. 21)

5. Opponents of the plan only had one-half hour to examine the work of the Redevelopment Agency (4th Civ. numbered 94346, Cl. Trans., pg. 29), when they were called upon to present their opposition.

Appellees' reference to the decision of the District Court of Appeal (No. 94346), that there was no abuse of discretion in refusing appellant a further continuance, as well as restricting her to only one-half hour to examine a 54 lbs. of printed and written reports, patently savors of the uneven justice of which Appellant complains.

Equally without merit is appellees' contention that by merely inserting the word "advisory" in the recesses of the Council Chambers, in the preamble of the initiatory ordinance, without the disclosure thereof on the ballot to the electors, enabled the State Municipal Corporation to nullify the votes cast. (See Appellant's Jurisdictional Statement, pages 12 to 17 inclusive.)

MANUEL RUIZ, JR.
Attorney for Appellant
704 So. Spring Street
Los Angeles, California

ALEXANDER RUIZ
Of Counsel

LE COPY

Office-Supreme Court, U.S.
FILED
NOV 1 1960
JAMES R. BROWNING, Clerk

IN THE

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CHARLOTTE ANDREWS,
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[redacted] Petition for Rehearing of Order which Dismissed Appeal Treating Appeal as Petition for Certiorari and Denying Certiorari

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Los Angeles 14, California
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SUBJECT INDEX

Page

Motion for leave to file and petition for rehearing of order denying certiorari 1

Petition for rehearing of order which dismissed appeal, and treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari was denied. 2

Order of Supreme Court Exhibit "A" 7

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CHARLOTTE ANDREWS,

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Motion for Leave to File and Petition for Rehearing of Order which Dismissed Appeal Treating Appeal as Petition for Certiorari and Denying Certiorari

MOTION FOR LEAVE TO FILE AND PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Petitioner respectfully moves for leave to file the annexed petition for rehearing of the order of this Court which dismissed her appeal, and treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari was denied, decided on October 10th, 1960.

Rehearing is sought at this time because appellant did not cast her appeal within the normal appellate

process of certiorari and special and important reasons which require settlement may now be considered as controlling in connection with intervening law since the appeal was taken.

The appeal was filed during the prior term of this Court, and dismissed without commenting on the merits during the pending current term of Court; and the Court clearly has power, in its discretion, to entertain the petition.

Dated: Oct. 1960.

.....

Counsel of Petitioner

Petition for Rehearing of order which dismissed appeal, and treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari was denied.

I

Petitioner prays that this Court grant rehearing of its order of October 10th, 1960, which dismissed petitioner's appeal (see Exh. "A"), and treating her papers on appeal as a petition for writ of certiorari, denied certiorari and request is made that a writ of certiorari issue to review the judgments of the State Courts of California, as herein set forth.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

Since the granting of the Order of Court of October 10th, 1960, it has become necessary to call the atten-

tion of the Justices, that the State Court of California has decided in the case at bar a federal question of substance not theretofore determined by this Court. There has since been thrust upon the Court, during its current term, and while it still has jurisdiction of the case at bar, the need for analysis and rule making in connection with the so-called civil rights of suffrage, and the meaningful exercise of the same, which requires the rejection of the California decision.

The case at bar is the only case involving a consideration of voting rights without regard to the "racist" questions involved in numerable matters now pending before the Court in its present term and which refer to related issues which are controlling.

It is of vital importance then, that the Court make an order to reconsider, and pass upon the phases called to its attention in the case at bar to thereby assert an objective counter-weight in an atmosphere heavily laden with civil voting rights but entirely devoid of any reference to the rights of the so-called "white majority" as do the facts in the case at bar.

Distinctions as to race, religion, conqueror and vanquished are interludes which are fleeting in the course of history, and basically, law based upon the unusual situation of the moment, must be balanced by decisions in the important area of voting rights, without reference to race, color or distinctions. It is necessary that the Supreme Court of the United States define an "effective vote" and not leave it to the States to do so.

The right to vote as affected by race or color has perhaps overshadowed its concomitant at issue in this

appeal, i.e. the "integrity of a vote once cast" as an attribute of national citizenship. However to consider one and ignore the other, is to study the top of a bottle and ignore its bottom or base upon which it rests.

The question is of imperative public importance, by virtue that historically courts have regarded the quality and content of a vote cast in a limited way, because in the past the citizen of the United States was endowed with almost complete liberty with regard to his property and person, which was subject to little or no administrative regulation by the government, and was fully and adequately competent to care for his own problems entirely independent of his franchise as an elector.

We are in the present term of court, on the pinnacle of a tremendous change which has been wrought in the citizen's capacity to maintain his integrity by himself, and his ability to protect himself along these lines is diminishing as time passes and in the future promises to be even less.

Supervision over all matters of human conduct, property and liberty have increased and multiplied themselves as the head of hydra, and no longer is the American Citizen symbolized as a frontiersman with his rifle, self-sufficient and providing himself and his family in all things necessary to their being. He is now one infentisma of a great mass, dependent for his very daily sustenance, liberty and property, upon others of the same great mass.

Our Federal Constitution, in its amendments 9 and 10, makes reference to "Rights and Powers retained

and reserved in the People". Circumstances surrounding enactment of the first ten amendments of the constitution leave no doubt that its framers were zealous in maintaining the self-sufficiency and integrity of its people, and this expression of intent and purpose pre-dates the Fourteenth Amendment here in issue.

Historically the elective franchise and the effect of a citizen's vote was secondary in importance, realistic thinking of the time concerned itself more with the sovereign independent individual, and fear was expressed that the democratic process would usurp and infringe upon the rights and powers recognized as inherent in the people.

Advanced technology, errosion of the original concept of the independence of the self-sufficient individual, designated as the "People" of the United States, requires an examination by this Court in its present term of the rights and privileges of United States Citizens, as the People, and whether or not the right to cast an effective vote, when authorized by state law, is a right and power reserved and retained by virtue of the Fourteenth Amendment, now that the former concept of the People as an association of self-sufficient individuals has disintegrated and the elective franchise is now the all important means in controlling individual and collective destinies under and subject to all terms expressed in the United States Constitution.

Where the fundamental law provides for equal rights of suffrage, each citizen should be possessed of the right of judicial redress if the law is violated.

For the reasons as set forth above, it is respectfully

urged that rehearing be granted upon the record already before the Court and that, upon such rehearing, a writ of certiorari issue to the Courts of Appeal of the State of California.

Respectfully submitted,

MANUEL RUIZ, JR.
Counsel for Petitioner
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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds above specified.

MANUEL RUIZ, JR.
Counsel for Petitioner

Exhibit "A"

SUPREME COURT OF THE UNITED STATES

ANDREWS v. CITY OF SAN BERNARDINO, et al.

APPEAL FROM THE DISTRICT COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT.

No. 137. Decided October 10, 1960.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.